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Handout A: Defining Civic Virtue

Write your responses to the following questions before you read Handout B: What is Civic Virtue?

1. When you encounter the term “civic virtue”, what do you believe it means?

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2. Why do you believe this?

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________________________________________________________________________________________________________________________________________
________________________________________________________________________________________________________________________________________
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3. What is the relationship between civic virtue and the constitutional republic that the U.S. Founders created?

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Handout B: Clarifying Civic Virtue

Questions #1 and 2 are also on Handout A. Write your revised responses to the following questions before you read Handout B: What is Civic Virtue?

1. Having done further reading, and discussing the topic, what do you now believe “civic virtue” means?

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2a. Compare your response to Question #1 to your response to the same question on Handout A. Did your response change at all after having read the article and participated in the discussion? Yes / No (Circle one.)

2b. If you did revise your answer: What, in the reading and discussion, caused you to revise your response?

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2c. If you did not revise your answer: Why did you not change your response?

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2d. Even if you did not change your response, what points (in the reading, the discussion, or both) did you find compelling and worth considering?

________________________________________________________________________________________________________________________________________

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3. What is the relationship between civic virtue and the constitutional republic that the U.S. Founders created?

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Handout C: Identifying and Defining Civic Virtues

**Contribution:** Discover your passions and talents, and use them to create what is beautiful and needed. Work hard to take care of yourself and those who depend on you.

**Courage:** Stand firm in being a person of character and doing what is right, especially when it is unpopular or puts you at risk.

**Humility:** Remember that your ignorance is far greater than your knowledge. Give praise to those who earn it.

**Integrity:** Tell the truth, expose untruths, and keep your promises.

**Justice:** Stand for equally applied rules and make sure everyone obeys them.

**Perseverance:** Remember how many before you chose the easy path rather than the right one, and stay the course.

**Respect:** Protect your mind and body as precious things. Extend that protection to every other person you encounter.

**Responsibility:** Strive to know and do what is best, not what is most popular. Be trustworthy for making decisions in the best long-term interests of the people and tasks of which they are in charge.

**Self-Governance:** Be self-controlled, avoiding extremes and not being influenced or controlled by others.

Write down the virtues assigned to your group. For each, identify a person or character in history, literature, or current events who exemplified that virtue. Include an explanation.

<table>
<thead>
<tr>
<th>Civic Virtue</th>
<th>Person/Character</th>
<th>Why, or How?</th>
</tr>
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<tbody>
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Handout D: George Washington at the Temple of Virtue

It was 1783, and George Washington’s troops were stationed at Newburgh, New York. At this late stage of the conflict, Congress was flat-out broke, and the army had not been paid for months. On March 10, an anonymous address from a “fellow soldier” (most likely Major John Armstrong) circulated through camp, calling the officers to meet the next day to answer “a country that tramples upon your rights, disdains your cries, and insults your distress.” The announcement suggested that the army should, under Washington’s leadership, defy Congress and launch a military coup. At this moment the Revolution could have spun out of control, ending in tyranny. Resistant to the allure of power, Washington was determined to quell the incipient uprising. Recognizing that the army’s patience had worn thin and that its grievances were legitimate, Washington knew he could neither cancel the meeting nor allow it to take place. Instead he shrewdly called his own substitute gathering on March 15, hoping somehow to mollify the men and avert a coup. He would meet his disgruntled officers in person, face-to-face, either to stand them down or be deposed. On the fifteenth, a “visibly agitated” Washington (according to an eye witness) spoke to a tense, restive audience in an overcrowded assembly hall known as “The Temple of Virtue.” He begged the officers not to take a step that would bury their reputations in infamy. “My God,” he asked, what evil could the author of the anonymous address have been up to? “Can he be a friend to the Country? Rather is he not an insidious foe,” perhaps even an enemy agent “sowing the seeds of discord & seperation between the Civil and Military power of the Continent?”

Despite an eloquent and impassioned speech, Washington’s arguments for forbearance fell on deaf ears. As hostile murmurs welled up in the audience, he miraculously subdued the malcontents with a dramatic gesture: Washington pulled out his glasses. No one had ever seen him wear them in public before. Donning them, he remarked, “Gentlemen, you must excuse me. Not only have I gone gray, but I have also grown blind in the service of my country.” That poignant moment, that admission of weakness, that selfless dedication to duty, shattered the mutiny and left the officers in tears. After Washington left the room, the assemblage unanimously rejected a military coup in favor of peaceful negotiations with Congress. The new nation had survived its brush with despotism.

Indeed, the American Revolution is unusual among modern world revolutions because it did not end in a dictatorship, like the French, Russian, and Chinese Revolutions. That the new nation instead ended up a republic had
a lot to do with Washington’s careful use of power. Once the war was over and independence won, his job complete, Washington resigned as Commander in Chief and retired back to his Mount Vernon plantation. The irony is that by never abusing power, and by giving it back to people, he became more and more powerful. Washington won the trust of his countrymen, who repeatedly called for his services, not only as Commander in Chief, but also as president of the 1787 Constitutional Convention, and finally as President of the U.S. for two terms, from 1789 to 1797. On four separate occasions the American people or their representatives thus unanimously elected Washington to lead them.

Washington’s contemporaries well understood his virtue. Consider the statue sculpted by the eighteenth-century French artist Jean Antoine Houdon. Instead of depicting one of Washington’s military victories, the statue shows Washington retiring from the army, hanging up his military cloak and sword, and going back to his plow. Similarly, artist John Trumbull’s painting that hangs in the U.S. Capitol rotunda shows Washington resigning his military commission back to Congress and becoming an ordinary citizen again. Washington always did the virtuous thing because he wanted “secular immortality.” Some men seek spiritual immortality—everlasting life in heaven. But Washington wanted a different type of immortality. He wanted to live forever in the minds of the American people. He wanted to be a leader unlike any other in modern world history—greatest of them all. To do so, he had to walk away from power, unlike other leaders.

Washington kept answering the call of his country because he became the only one who could. Not until the nation gained maturity could another leader hold it together. As Thomas Jefferson admonished him, “North and South will only hang together if they have you to hang onto.” By accepting two terms as President, Washington put his cherished reputation at stake. Had he died in office (his greatest fear was dying in office) he would have died holding power instead of giving it up, and his prized reputation would have been shot. Not until he retired for good did he secure his secular immortality once and for all. Without an “Indispensable Man” like Washington, the American experiment in republican government could never have succeeded, or become a model and inspiration to the world.

Author: Stuart Leibiger, LaSalle University
Critical Thinking Questions

1. What were George Washington’s troops considering doing in 1783?

2. Might Washington have been tempted to seize power and become a dictator? Explain.

3. Self-governance requires officials to moderate the “passions” of the people. That is, to serve as a check against the tyranny of the majority, or against mob violence. What are some ways that Washington accomplished this?

4. Self-governance requires individuals to moderate their own passions and put the public good ahead of their own self-interest. What are some ways Washington accomplished this?

5. Washington never abused the military power given to him as Commander in Chief of the Continental Army. He resisted the temptation to use the army as his personal bodyguard, to make himself a dictator, to become a Caesar, a Napoleon, or a Hitler. Instead, to what principles did Washington remain faithful?

6. Historian Stuart Leibiger notes the irony that by never abusing power, and giving it back to the people, Washington became more and more powerful. Why might this have occurred?

7. Name some other examples from history where individuals have voluntarily given up great power. Are they easy to find?

8. How does Washington’s greatest fear—that he would die in office—evidence his putting the public good ahead of his own interest?

9. What effect did George Washington’s example have the early U.S. republic and on our societal criteria for good leadership?
Handout E: Self-Governance and American Self-Government

1. How is civic virtue important for the success of the constitutional republic that the U.S. Founders created?

2. Self-governance integrates self-reliance and moderation. It means to show self-control, avoid extremes, and not to be influenced or controlled by others. How does self-government at a societal level require self-governance on an individual level?

3. Moments after taking the oath of office for the first time, President Washington addressed the new nation, stating, “The preservation of the sacred fire of liberty, and the destiny of the Republican model of Government, are justly considered as deeply, perhaps as finally staked, on the experiment entrusted to the hands of the American people.” How can you personally uphold the virtue of self-governance and ensure the success of this U.S. experiment in representative government?

4. Draw lines to connect each constitutional principle listed below to a civic virtue that relates to it and is necessary for it to function as the Founders intended in the U.S. Constitution.

<table>
<thead>
<tr>
<th>Constitutional Principles</th>
<th>Civic Virtues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Checks and balances</td>
<td>Contribution</td>
</tr>
<tr>
<td>Consent of the governed</td>
<td>Courage</td>
</tr>
<tr>
<td>Federalism</td>
<td>Humility</td>
</tr>
<tr>
<td>Individual liberty</td>
<td>Integrity</td>
</tr>
<tr>
<td>Limited government</td>
<td>Justice</td>
</tr>
<tr>
<td>Separation of Powers</td>
<td>Perseverance</td>
</tr>
<tr>
<td></td>
<td>Respect</td>
</tr>
<tr>
<td></td>
<td>Responsibility</td>
</tr>
<tr>
<td></td>
<td>Self-Governance</td>
</tr>
</tbody>
</table>
Handout F: Making Our Republic Work

Reread your answer to question #2 on Handout B. Expand on it in the form of a well-constructed paragraph that responds more fully to the question:

*How does self-governance, in both citizens and elected officials, relate to the running of a constitutional republic?*
Handout G: Real-Life Portraits of Civic Virtue

At right is a painting by 18th century artist John Singleton Copley, a well-known portrait artist in colonial America. His portraits conveyed the character of a person or a family and included artifacts that “told” viewers about the people in the painting.

**Do a “close read” of this painting.** How did the artist use elements of art to tell you more about the family? *(For example: Color – How does the use of light colors direct your eye? What does the artist want you to notice about family relationships? Line and space – where are the people placed close together, and where are there spaces? What does this convey about the family? Face and gestures – What are the different postures of the people? Stiff? Relaxed? In what direction is each person facing? What expressions are on their faces? What does this communicate to the viewer?)*

What other details (artifacts, other visual clues) illustrate character traits, location, or other details about the family? *(For example: What is placed in the lower left corner of the painting? What is in the hand of the child reaching up to the father? What does this tell you about the family?)*

Work with your assigned group to create and photograph a “visual tableau” in which you pose like one of Copley’s portraits. Your portrait’s composition should be similar to a Copley portrait, may be of an historic or contemporary figure, and must include props that illustrate either self-governance or another of the civic virtues discussed in class. Clothing, props, and background may reflect any time period as long as they help viewers to “read” the civic virtue represented by the portrait you create.

In addition, write a paragraph, in the form of a museum label or caption, which explains the portrait and the civic virtue it illustrates. It should be formal, written close-read of your “painting.”
Handout H: Excerpts from Washington’s Farewell Address (1796)

Directions: With your partner(s), highlight the section of the Farewell Address that has been assigned to you. Then, read and discuss that section and answer the questions at the end of the handout. Be prepared to report on your responses to those questions.

Excerpts from Washington’s Farewell Address (1796)

The period for a new election of a citizen to administer the executive government of the United States being not far distant...it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprise you of the resolution I have formed, to decline being considered among the number of those out of whom a choice is to be made.

...be assured that this resolution has not been taken without a strict regard to all the considerations appertaining to the relation which binds a dutiful citizen to his country; and that in withdrawing the tender of service, which silence in my situation might imply, I am influenced by no diminution of zeal for your future interest, no deficiency of grateful respect for your past kindness, but am supported by a full conviction that the step is compatible with both.

...The impressions with which I first undertook the arduous trust were explained on the proper occasion. In the discharge of this trust, I will only say that I have, with good intentions, contributed towards the organization and administration of the government the best exertions of which a very fallible judgment was capable...Satisfied that if any circumstances have given peculiar value to my services, they were temporary, I have the consolation to believe that, while choice and prudence invite me to quit the political scene, patriotism does not forbid it.

In looking forward to the moment which is intended to

Notes on Washington’s Farewell Address (1796)

Washington delivered the Farewell Address to tell the American people that he would not seek a third term as president.

Although he is leaving he still has the nation’s future interest in mind.

He contributed to the organization and administration of the government with the best judgment possible even though he felt his qualifications were inferior.

His services were temporary.

He believes he owes a debt of gratitude
terminate the career of my public life, my feelings do not permit me to suspend the deep acknowledgment of that debt of gratitude which I owe to my beloved country for the many honors it has conferred upon me; still more for the steadfast confidence with which it has supported me; and for the opportunities I have thence enjoyed of manifesting my inviolable attachment, by services faithful and persevering, though in usefulness unequal to my zeal.

...The name of American, which belongs to you in your national capacity, must always exalt the just pride of patriotism more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits, and political principles. You have in a common cause fought and triumphed together; the independence and liberty you possess are the work of joint counsels, and joint efforts of common dangers, sufferings, and successes.

...Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name, where the government is too feeble to withstand the enterprises of faction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

...Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the spirit of party generally...This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but, in those of the popular form, it is seen in its greatest rankness, and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension...is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result gradually incline the minds of men to seek security and repose in the absolute
to the country and the honors and confidence it bestowed upon him.

Americans must have pride in patriotism despite differences in religion, manners, habits, and political principles.

Liberty will be protected in a government with divided powers. The government needs to be able to withstand the whims of factions, the people need to be limited by the prescribe laws, and security and tranquility must be maintained in order to protect the rights of people and property.

All types of governments must deal with the passions of the human mind.

The dominance of one faction over another will cause a spirit of revenge and may lead to despotism.

Problems will increase and men will seek security in the absolute power of one individual.
power of an individual; and sooner or later the chief of some prevailing faction...turns this disposition to the purposes of his own elevation, on the ruins of public liberty...the common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.

...It is important, likewise, that the habits of thinking in a free country should inspire caution in those entrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it, which predominates in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositaries, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern; some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them.

...Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them... Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.

It is substantially true that virtue or morality is a necessary spring of popular government. The rule, indeed, extends with more or less force to every species of free government.

...In offering you, my countrymen, these counsels of an It is the interest and duty of the people to discourage and restrain these issues.

Government officials should confine themselves to their constitutional powers and avoid overstepping into other departments.

If not, the powers may end up being consolidated into one department causing despotism.

Checks on the exercise of political power by dividing it and distributing it among many departments are necessary. The people should be cautious and prevent encroachments on power between the departments of government.

Religion and morality are crucial in protecting political prosperity. People cannot be true patriots if they try to subvert human happiness. All people (including politicians) should respect these habits.

Even without religion, morality can prevail through education, reason, and experience.

Virtue or morality is necessary in popular government.

Washington states that he dare not hope
old and affectionate friend, I dare not hope they will
make the strong and lasting impression I could wish;
that they will control the usual current of the passions,
or prevent our nation from running the course which has
hitherto marked the destiny of nations. But, if I may even
flatter myself that they may be productive of some partial
benefit, some occasional good; that they may now and
then recur to moderate the fury of party spirit, to warn
against the mischiefs of foreign intrigue, to guard against
the impostures of pretended patriotism; this hope will be
a full recompense for the solicitude for your welfare, by
which they have been dictated.

...How far in the discharge of my official duties I have been
guided by the principles which have been delineated, the
public records and other evidences of my conduct must
witnes to you and to the world. To myself, the assurance
of my own conscience is, that I have at least believed
myself to be guided by them.

Washington believes that he has been
guided by principles.

Critical Thinking Questions

1. Write a 1-3 sentence summary explaining your assigned section of the Address.

2. What does this section reveal about George Washington’s character? Which of the civic virtues (listed below) is reflected in it?

3. Washington believed that virtue is essential to a republic and was himself a model of self-
governance. Below, circle the civic virtue and the constitutional principle most apparent in the
section of the Address that you read and discussed, then answer the question at bottom.

| Civic Virtues       | • Contribution  | • Perseverance |
|                     | • Courage       | • Respect      |
|                     | • Humility       | • Responsibility|
|                     | • Integrity      | • Self-Governance|
|                     | • Justice        |                |

| Constitutional Principles | • Checks and balances | • Individual liberty |
|                           | • Consent of the governed | • Limited government |
|                           | • Federalism           | • Separation of Powers |

In what way is this civic virtue an important part of maintaining a form of government based, in part, on
that particular constitutional principle?
IN CONGRESS, July 4, 1776. The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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 among Men, deriving their just powers from the consent of the governed,—that whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.
He has refused for a long time, after such
dissolutions, to cause others to be elected;
whereby the Legislative powers, incapable of
Annihilation, have returned to the People at large
for their exercise; the State remaining in the
mean time exposed to all the dangers of invasion
from without, and convulsions within.

He has endeavoured to prevent the population
of these States; for that purpose obstructing the
Laws for Naturalization of Foreigners; refusing to
pass others to encourage their migrations hither,
and raising the conditions of new Appropriations
of Lands.

He has obstructed the Administration of Justice,
by refusing his Assent to Laws for establishing
Judiciary powers.

He has made Judges dependent on his Will alone,
for the tenure of their offices, and the amount
and payment of their salaries.

He has erected a multitude of New Offices, and
sent hither swarms of Officers to harrass our
people, and eat out their substance.

He has kept among us, in times of peace,
Standing Armies without the Consent of our
legislatures.

He has affected to render the Military
independent of and superior to the Civil power.

He has combined with others to subject us to
a jurisdiction foreign to our constitution, and
unacknowledged by our laws; giving his Assent to
their Acts of pretended Legislation:

For Quartering large bodies of armed troops
among us:

For protecting them, by a mock Trial, from
punishment for any Murders which they should
commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the
world:

For imposing Taxes on us without our Consent:

For deprivings us in many cases, of the benefits of
Trial by Jury:

For transporting us beyond Seas to be tried for
pretended offences:

For abolishing the free System of English Laws
in a neighbouring Province, establishing therein
an Arbitrary government, and enlarging its
Boundaries so as to render it at once an example
and fit instrument for introducing the same
absolute rule into these Colonies:

For taking away our Charters, abolishing our
most valuable Laws, and altering fundamentally
the Forms of our Governments:

For suspending our own Legislatures, and
declaring themselves invested with power to
legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring
us out of his Protection and waging War against
us.

He has plundered our seas, ravaged our Coasts,
burnt our towns, and destroyed the lives of our
people.

He is at this time transporting large Armies of
foreign Mercenaries to compleat the works of
death, desolation and tyranny, already begun
with circumstances of Cruelty & perfidy scarcely
paralleled in the most barbarous ages, and totally
unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken
Captive on the high Seas to bear Arms against
their Country, to become the executioners of
their friends and Brethren, or to fall themselves
by their Hands.
He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

[Georgia:
Button Gwinnett
Lyman Hall
George Walton

[Georgia:]
George Walton

[North Carolina:
William Hooper
Joseph Hewes
John Penn

[North Carolina:]
John Penn

[South Carolina:
Edward Rutledge
Thomas Heyward, Jr.
Thomas Lynch, Jr.
Arthur Middleton

[South Carolina:]
George Washington

[Maryland:]
Samuel Chase
William Paca
Thomas Stone
Charles Carroll of Carrollton

[Maryland:]
William Paca

[Virginia:]
George Wythe
Richard Henry Lee
Thomas Jefferson
Benjamin Harrison
Thomas Nelson, Jr.
Francis Lightfoot Lee
Carter Braxton

[Virginia:]
Carter Braxton

[Pennsylvania:]
Robert Morris
Benjamin Rush
Benjamin Franklin
John Morton
George Clymer
James Smith
George Taylor
James Wilson
George Ross

[Pennsylvania:]
James Smith

[New York:]
William Floyd
Philip Livingston
Francis Lewis
Lewis Morris

[New York:]
John Morris

[New Jersey:]
Richard Stockton
John Witherspoon
Francis Hopkinson
John Hart
Abraham Clark

[New Jersey:]
Abraham Clark

[Delaware:]
Caesar Rodney
George Read
Thomas McKean

[Delaware:]
George Read

[Massachusetts:]
John Hancock
Samuel Adams
Francis Lewis
Robert Treat Paine
Elbridge Gerry

[Massachusetts:]
Elbridge Gerry

[Rhode Island:]
Stephen Hopkins
William Ellery

[Rhode Island:]
William Ellery

[Connecticut:]
Roger Sherman
Samuel Huntington
William Williams
Oliver Wolcott

[Connecticut:]
John Adams
Handout B: Declaration Scavenger Hunt Slips

**Directions to the teacher:** Cut out and distribute the slips. Have students determine the relationship of the person, place, or thing to the Declaration.

<table>
<thead>
<tr>
<th>Person/Phrase</th>
<th>Person/Phrase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomas Jefferson</td>
<td>The Committee of Five</td>
</tr>
<tr>
<td>Natural Rights</td>
<td>Continental Congress</td>
</tr>
<tr>
<td>The Lee Resolution</td>
<td>Spirit of ‘76</td>
</tr>
<tr>
<td>Common Sense</td>
<td>Treason</td>
</tr>
<tr>
<td>King George III</td>
<td>Charles Thomson</td>
</tr>
<tr>
<td>John Hancock</td>
<td>National Archives</td>
</tr>
<tr>
<td>John Locke</td>
<td>Abraham Lincoln</td>
</tr>
<tr>
<td>George Mason</td>
<td>Martin Luther King, Jr.</td>
</tr>
<tr>
<td>Revolutionary War</td>
<td>July 2, 1776</td>
</tr>
<tr>
<td>Government by Consent</td>
<td>Sacred Honor</td>
</tr>
<tr>
<td>Dunlap Broadsides</td>
<td>Engrossing</td>
</tr>
<tr>
<td>No Taxation Without Representation</td>
<td>Social Compact</td>
</tr>
</tbody>
</table>
Handout C: The Structure of the Declaration

**Directions:** As you read the Declaration, explain the contents of your assigned sections.

<table>
<thead>
<tr>
<th>Section Title</th>
<th>Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td><em>When, in the course of human events...</em></td>
</tr>
<tr>
<td>Preamble</td>
<td><em>We hold these truths to be self-evident...</em></td>
</tr>
<tr>
<td>Indictment</td>
<td><em>He has refused...</em></td>
</tr>
<tr>
<td>Indictment (cont.)</td>
<td><em>For quartering large bodies of troops...</em></td>
</tr>
<tr>
<td>Denunciation</td>
<td><em>Nor have We been wanting...</em></td>
</tr>
<tr>
<td>Conclusion</td>
<td><em>We, therefore, the Representatives...</em></td>
</tr>
<tr>
<td>Signatures</td>
<td></td>
</tr>
</tbody>
</table>
Directions: The following paragraphs are from the Declaration of Independence. Read them carefully, and underline words or phrases you think are important. Think about the questions that follow.

Note: Some spelling, spacing, and punctuation have been changed for clarity.

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 [rights] are Life, Liberty and the pursuit of Happiness.

That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,

That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

1. What do you think “unalienable rights” (or “inalienable rights”) means?

According to the document:

2. Where do unalienable rights come from?

3. What is the purpose of government?

4. From where does government get its power?

5. Are the powers given to the government by the people limited or unlimited?

6. When should government be changed?

7. How could the Continental Congress approve this document when so many of its members owned slaves?

8. Does the fact that many of these men owned slaves mean these ideas are wrong or less important?
Handout E: The Declaration, the Founders, and Slavery

Directions: Read the information below and use your understanding to complete the response activity on the next page.

“All Men Are Created Equal”

How did the people of 1776 understand these words? How do we understand them now?
With this statement, the Founders explained their belief that there was no natural class of rulers among people. Not everyone was born with the same talents or habits, of course. People are different. But the natural differences among people do not mean that certain people are born to rule over others. Some people might be better suited to govern, but they have no right to rule over others without their permission. This permission is called consent of the governed.

Some say that the Declaration’s authors did not mean to include everyone when they wrote “all men are created equal.” They say that Jefferson and the Continental Congress just meant to include white men who owned property. But this is not true. Jefferson and the Continental Congress did not believe that there was a natural class of rulers, and they asserted that the colonists had the same right to rule themselves as the people of England.

As a group, the Founders were conflicted about slavery. Many of them knew it was evil. It had already been done away with in some places, and they hoped that it would die out in future generations.

Slavery was an important economic and social institution in the United States. The Founders understood that they would have to tolerate slavery as part of a political compromise. They did not see a way to take further action against slavery in their lifetimes, though many freed their slaves after their deaths.

Over time, more and more Americans have come to see the Declaration as a moral argument against slavery. But this argument was not made by abolitionists during the Declaration’s time. When Congress began debating slavery in new territories in the 19th century, Americans began basing their arguments in the Declaration. Eventually, more people came to realize that the American ideal of self-government meant that black Americans should participate just as fully in the rights and responsibilities of citizenship as white Americans.
Handout E: Page 2

1. He [the King] has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. ... Determined to keep open a market where MEN should be bought and sold....
   –Original draft of the Declaration of Independence, 1776

2. Article the Sixth. There shall be neither Slavery nor involuntary Servitude in the said territory otherwise than in the punishment of crimes, whereof the party shall have been duly convicted; Provided always, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.
   –Northwest Ordinance, 1787

3. There is not a man living who wishes more sincerely than I do, to see a plan adopted for the abolition of it [slavery].
   –George Washington, 1786

4. We have seen the mere distinction of color made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man.
   –James Madison, 1787

5. Slavery is ... an atrocious debasement of human nature.
   –Benjamin Franklin, 1789

6. Every measure of prudence, therefore, ought to be assumed for the eventual total extirpation [removal] of slavery from the United States. ...I have, through my whole life, held the practice of slavery in ... abhorrence.
   –John Adams, 1819

7. It is much to be wished that slavery may be abolished. The honour of the States, as well as justice and humanity, in my opinion, loudly call upon them to emancipate these unhappy people. To contend for our own liberty, and to deny that blessing to others, involves an inconsistency not to be excused.
   –John Jay, 1786

Select one quotation and write a response. How, if at all, does this information help you understand the topic of the Founders’ view on slavery?

______________________________________________________________________________________________________________
______________________________________________________________________________________________________________
______________________________________________________________________________________________________________
______________________________________________________________________________________________________________
______________________________________________________________________________________________________________
For nearly 250 years, the existence of slavery deprived African Americans of independent lives and individual liberty. It also compromised the republican dreams of white Americans, who otherwise achieved unprecedented success in the creation of political institutions and social relationships based on citizens’ equal rights and ever-expanding opportunity. Thomas Jefferson, who in 1787 described slavery as an “abomination” and predicted that it “must have an end,” had faith that “there is a superior bench reserved in heaven for those who hasten it.” He later avowed that “there is not a man on earth who would sacrifice more than I would to relieve us from this heavy reproach in any practicable way.” Although Jefferson made several proposals to curb slavery’s growth or reduce its political or economic influence, a workable plan to eradicate slavery eluded him. Others also failed to end slavery until finally, after the loss of more than 600,000 American lives in the Civil War, the United States abolished it through the 1865 ratification of the Thirteenth Amendment to the Constitution.

American slavery and American freedom took root at the same place and at the same time. In 1619—the same year that colonial Virginia’s House of Burgesses convened in Jamestown and became the New World’s first representative assembly—about 20 enslaved Africans arrived at Jamestown and were sold by Dutch slave traders. The number of slaves in Virginia remained small for several decades, however, until the first dominant labor system—indentured servitude—fell out of favor after 1670. Until then indentured servants, typically young and landless white Englishmen and Englishwomen in search of opportunity, arrived by the thousands. In exchange for passage to Virginia, they agreed to labor in planters’ tobacco fields for terms usually ranging from four to seven years. Planters normally agreed to give them, after their indentures expired, land on which they could establish their own tobacco farms. In the first few decades of settlement, as demand for the crop boomed, such arrangements usually worked in the planters’ favor. Life expectancy in Virginia was short and few servants outlasted their terms of indenture. By the mid-1600s, however, as the survival rate of indentured servants increased, more earned their freedom and began to compete with their former masters. The supply of tobacco rose more quickly than demand and, as prices decreased, tensions between planters and former servants grew.
These tensions exploded in 1676, when Nathaniel Bacon led a group composed primarily of former indentured servants in a rebellion against Virginia’s government. The rebels, upset by the reluctance of Governor William Berkeley and the gentry-dominated House of Burgesses to aid their efforts to expand onto American Indians’ lands, lashed out at both the Indians and the government. After several months the rebellion dissipated, but so, at about the same time, did the practice of voluntary servitude.

In its place developed a system of race-based slavery. With both black and white Virginians living longer, it made better economic sense to own slaves, who would never gain their freedom and compete with masters, than to rent the labor of indentured servants, who would. A few early slaves had gained their freedom, established plantations, acquired servants, and enjoyed liberties shared by white freemen, but beginning in the 1660s Virginia’s legislature passed laws banning interracial marriage; it also stripped African Americans of the rights to own property and carry guns, and it curtailed their freedom of movement. In 1650 only about 300 blacks worked Virginia’s tobacco fields, yet by 1680 there were 3,000 and, by the start of the eighteenth century, nearly 10,000.

Slavery surged not only in Virginia but also in Pennsylvania, where people abducted from Africa and their descendants harvested wheat and oats, and in South Carolina, where by the 1730s rice planters had imported slaves in such quantity that they accounted for two-thirds of the population. The sugar-based economies of Britain’s Caribbean colonies required so much labor that, on some islands, enslaved individuals outnumbered freemen by more than ten to one. Even in the New England colonies, where staple-crop agriculture never took root, the presence of slaves was common and considered unremarkable by most.

Historian Edmund S. Morgan has suggested that the prevalence of slavery in these colonies may have, paradoxically, heightened the sensitivity of white Americans to attacks against their own freedom. Thus, during the crisis preceding the War for Independence Americans frequently cast unpopular British legislation—which taxed them without the consent of their assemblies, curtailed the expansion of their settlements, deprived them of the right to jury trials, and placed them under the watchful eyes of red-coated soldiers—as evidence of an imperial conspiracy to “enslave” them. American patriots who spoke in such terms did not imagine that they would be forced to toil in tobacco fields; instead, they feared that British officials would deny to them some of the same individual and civil rights that they had denied enslaved African Americans. George Mason, collaborating with George Washington, warned in the Fairfax Resolves of 1774 that the British Parliament pursued a “regular, systematic plan” to “fix the shackles of slavery upon us.”

As American revolutionaries reflected on the injustice of British usurpations of their freedom and began to universalize the individual rights that they had previously tied to their status as Englishmen, they grew increasingly conscious of the inherent injustice of African-American slavery. Many remained skeptical that blacks possessed the same intellectual capabilities as whites, but few refused to count Africans as members of the human family or possessors of individual rights. When Jefferson affirmed in the Declaration of Independence “that all men are created equal,” he did not mean all white men. In fact, he attempted to turn the Declaration into a platform from which Americans would denounce the trans-Atlantic
slave trade. This he blamed on Britain and its king who, Jefferson wrote, “has waged cruel war against human nature itself, violating it’s [sic] most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere.” The king was wrong, he asserted, “to keep open a market where MEN should be bought & sold.” Delegates to the Continental Congress from South Carolina and Georgia, however, vehemently opposed the inclusion of these lines in the Declaration of Independence. Representatives of other states agreed to delete them. Thus began, at the moment of America’s birth, the practice of prioritizing American unity over black Americans’ liberty.

Pragmatism confronted principle not only on the floor of Congress but also on the plantations of many prominent revolutionaries. When Jefferson penned his stirring defense of individual liberty, he owned 200 enslaved individuals. Washington, the commander-in-chief of the Continental Army and future first president, was one of the largest slaveholders in Virginia. James Madison—who, like Jefferson and Washington, considered himself an opponent of slavery—was also a slaveholder. So was Mason, whose Virginia Declaration of Rights stands as one of the revolutionary era’s most resounding statements on behalf of human freedom. Had these revolutionaries attempted to free their slaves, they would have courted financial ruin. Alongside their landholdings, slaves constituted the principal asset against which they borrowed. The existence of slavery, moreover, precluded a free market of agricultural labor; they could never afford to pay free people—who could always move west to obtain their own farms, anyway—to till their fields.

Perhaps the most powerful objection to emancipation, however, emerged from the same set of principles that compelled the American revolutionaries to question the justice of slavery. Although Jefferson, Washington, Madison, and Mason considered human bondage a clear violation of individual rights, they trembled when they considered the ways in which emancipation might thwart their republican experiments. Not unlike many nonslaveholders, they considered especially fragile the society that they had helped to create. In the absence of aristocratic selfishness and force, revolutionary American governments relied on virtue and voluntarism. Virtue they understood as a manly trait; the word, in fact, derives from the Latin noun vir, which means “man.” They considered men to be independent and self-sufficient, made free and responsible by habits borne of necessity. Virtuous citizens made good citizens, the Founders thought. The use of political power for the purpose of exploitation promised the virtuous little and possessed the potential to cost them much. Voluntarism was virtue unleashed: the civic-minded, selfless desire to ask little of one’s community but, because of one’s sense of permanence within it, to give much to it. The Founders, conscious of the degree to which involuntary servitude had rendered slaves dependent and given them cause to resent white society, questioned their qualifications for citizenship. It was dangerous to continue to enslave them, but perilous to emancipate them. Jefferson compared it to holding a wolf by the ears.

These conundrums seemed to preclude an easy fix. Too aware of the injustice of slavery to expect much forgiveness from slaves, in the first decades of the nineteenth century a number of Founders embarked on impractical schemes to purchase the freedom of slaves and “repatriate” them from America to Africa. In the interim, debate
about the continued importation of slaves from Africa stirred delegates to the Constitutional Convention. South Carolina’s Charles Pinckney vehemently opposed prohibitions on the slave trade, arguing that the matter was best decided by individual states. The delegates compromised, agreeing that the Constitution would prohibit for twenty years any restrictions on the arrival of newly enslaved Africans. As president, Jefferson availed himself of the opportunity afforded by the Constitution when he prohibited the continued importation of Africans into America in 1808. Yet he had already failed in a 1784 attempt to halt the spread of slavery into the U.S. government’s western territory, which stretched from the Great Lakes south toward the Gulf of Mexico (the compromise Northwest Ordinance of 1787 drew the line at the Ohio River), and in his efforts to institute in Virginia a plan for gradual emancipation (similar to those that passed in Northern states, except that it provided for the education and subsequent deportation of freed African Americans). Of all the Founders, Benjamin Franklin probably took the most unequivocal public stand against involuntary servitude when, in 1790, he signed a strongly worded antislavery petition submitted to Congress by the Pennsylvania Abolition Society. This, too, accomplished little. The revolutionary spirit of the postwar decade, combined with the desire of many Upper South plantation owners to shift from labor-intensive tobacco to wheat, created opportunities to reduce the prevalence of slavery in America—especially in the North. Those opportunities not seized upon—especially in the South—would not soon return.

Eli Whitney’s invention of the cotton gin in 1793 widened the regional divide. By rendering more efficient the processing of cotton fiber—which in the first half of the nineteenth century possessed a greater value than all other United States exports combined—Whitney’s machine triggered a resurgence of Southern slavery. Meanwhile, the wealth that cotton exports brought to America fueled a booming Northern industrial economy that relied on free labor and created a well-educated middle class of urban professionals and social activists. These individuals kept alive the Founders’ desire to rid America of slavery, but they also provoked the development of Southern proslavery thought. At best, Southerners of the revolutionary generation had viewed slavery as a necessary evil; by the 1830s, however, slaveholders began to describe it as a positive good. African Americans were civilized Christians, they argued, but their African ancestors were not. In addition, the argument continued, slaves benefited from the paternalistic care of masters who, unlike the Northern employers of “wage slaves,” cared for their subordinates from the cradle to the grave. This new view combined with an older critique of calls for emancipation: since slaves were the property of their masters, any attempt to force their release would be a violation of masters’ property rights.

Regional positions grew more intractable as the North and South vied for control of the West. Proposals to admit into statehood Missouri, Texas, California, Kansas, and Nebraska resulted in controversy as Northerners and Southerners sparred to maintain parity in the Senate. The 1860 election to the presidency of Abraham Lincoln, a Republican who opposed the inclusion of additional slave states, sparked secession and the Civil War.

“I tremble for my country when I reflect that God is just,” Jefferson had prophetically remarked, for “his justice cannot sleep for ever.” Americans paid dearly for the sin of slavery. Efforts by
members of the Founding generation failed to identify moderate means to abolish the practice, and hundreds of thousands died because millions had been deprived of the ability to truly live.

Robert M. S. McDonald, Ph.D.
United States Military Academy

Suggestions for Further Reading:


Handout G: Comparing the Second Treatise of Civil Government to the Declaration of Independence

Directions: Read the excerpts from John Locke’s *Second Treatise of Government* and the Declaration of Independence. As you read, think about the similarities and differences between the documents, and then answer the questions below. Note: Some spelling, spacing, and punctuation have been changed for clarity.

**EXCERPTS: JOHN LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT, 1690**

Sec. 4. To understand political power right, and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions.

A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more [power] than another; ...

Sec. 6. But though this be a state of liberty, yet it is not a state of license: though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it...

Sec. 22. The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man, in society, is to be under no other legislative power, but that established, by consent, in the commonwealth; nor under the dominion of any will, or restraint of any law, but what that legislative shall enact...

Sec. 87. Man being born, as has been proved, with a title to perfect freedom, and an uncontrolled enjoyment of all the rights and privileges of the law of nature, equally with any other man, or number of men in the world, hath by nature a power, not only to preserve his property, that is, his life, liberty and estate ... But because no political society can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto, punish the offences of all those of that society; there, and there only is political society ... Those who are united into one body, and have a common established law and judicature to appeal to, with authority to decide controversies between them, and punish offenders, are in civil society one with another...

Sec. 124. The great and chief end, therefore, of men’s uniting into commonwealths, and putting themselves under government, is the preservation of their property. To which in the state of nature there are many things wanting. Sec. 222. ...[W]henever the legislators endeavor to take away, and destroy the property of
Handout G: Page 2

the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any farther obedience... Whencever therefore the legislative shall transgress this fundamental rule of society; and either by ambition, fear, folly or corruption, endeavour to grasp themselves, or put into the hands of any other, an absolute power over the lives, liberties, and estates of the people; by this breach of trust they forfeit the power the people had put into their hands for quite contrary ends, and it devolves to the people, who have a right to resume their original liberty, and, by the establishment of a new legislative, (such as they shall think fit) provide for their own safety and security, which is the end for which they are in society.

EXCERPTS: DECLARATION OF INDEPENDENCE, 1776

IN CONGRESS, July 4, 1776.
The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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 among Men, deriving their just powers from the consent of the governed,—that whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.... But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security...

Critical Thinking Questions

1. What ideas or principles do you see in both documents?

2. According to each document:
   a. What is the natural condition of mankind?
   b. What is the purpose of government?
   c. Why does a just government need the consent of the governed?
Handout H: Response to the Declaration of Independence

Directions: Read and consider the following excerpt from the Declaration of Independence.

*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 among Men, deriving their just powers from the consent of the governed.*

Prompt: What are the most important ideals, principles, or virtues expressed in the Declaration of Independence and to what extent does America today meet the promise of those ideals?

Begin your response on this page, and use extra paper as needed.
1. ... the English Church shall be free, and shall have her rights entire, and her liberties inviolate...

13. [T]he city of London shall have all its ancient liberties and free customs... furthermore...all other cities, boroughs, towns, and ports shall have all their liberties and free customs...

20. A freeman shall not be amerced [fined] for a slight offense, except in accordance with the degree of the offense; and for a grave offense he shall be amerced in accordance with the gravity of the offense...

28. No constable or other bailiff of ours shall take corn or other provisions from anyone without immediately tendering money therefore, unless he can have postponement thereof by permission of the seller...

39. No freemen shall be taken or imprisoned or disseised [deprived] or exiled or in any way destroyed...except by the lawful judgment of his peers or by the law of the land...

40. To no one will we sell, to no one will we refuse or delay, right or justice...

42. It shall be lawful in future for anyone (excepting always those imprisoned or outlawed in accordance with the law of the kingdom...) to leave our kingdom and to return...
Handout B: The Mayflower Compact (1620)

In the name of God, Amen. We, whose names are underwritten, the loyal subjects of our dread Sovereigne Lord, King James, by the grace of God, of Great Britaine, France and Ireland king, defender of the faith, etc. having undertaken, for the glory of God, and advancement of the Christian faith, and honour of our king and country, a voyage to plant the first colony in the Northerne parts of Virginia, doe by these presents solemnly and mutually in the presence of God and one of another, covenant and combine ourselves together into a civill body politick, for our better ordering and preservation, and furtherance of the ends aforesaid; and by virtue hereof to enacte, constitute, and frame such just and equall laws, ordinances, acts, constitutions and offices, from time to time, as shall be thought most meete and convenient for the generall good of the Colonie unto which we promise all due submission and obedience. In witness whereof we have hereunder subscribed our names at Cape-Cod the 11. of November, in the year of the raigne of our sovereigne lord, King James, of England, France and Ireland, the eighteenth, and of Scotland the fiftie-fourth. Anno Dom. 1620.

John Carver
William Bradford
Edward Winslow
William Brewster
Issac Allerton
Myles Standish
John Alden
Samuel Fuller
Christopher Martin
William Mullins
William White
Richard Warren
John Howland
Stephen Hopkins
Edward Tilley
John Tilley
Francis Cooke
Thomas Rogers
Thomas Tinker
John Rigdale
Edward Fuller
John Turner
Francis Eaton
James Chilton
John Crackston
John Billington
Moses Fletcher
John Goodman
Degory Priest
Thomas Williams
Gilbert Winslow
Edmund Margeson
Peter Browne
Richard Britteridge
George Soule
Richard Clarke
Richard Gardiner
John Allerton
Thomas English
Edward Dotey
Edward Leister
III. And where also by the Statute called *The Great Charter of the Liberties of England*, it is declared and enacted, That no Freeman may be taken or imprisoned, or be disseised of his Freehold or Liberties, or his Free Customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his Peers, or by the Law of the Land.

IV. And in the Eight and twentieth Year of the Reign of King *Edward* the Third, it was declared and enacted by Authority of Parliament, That no Man of what Estate or Condition that he be, should be put out of his Land or Tenements, nor taken, nor imprisoned, nor disherited, nor put to Death, without being brought to answer by due Process of Law.

VI. And whereas of late great Companies of Soldiers and Mariners have been dispersed into divers Counties of the Realm, and the Inhabitants against their Wills have been compelled to receive them into their Houses, and there to suffer them to sojourn, against the Laws and Customs of this Realm, and to the great Grievance and Vexation of the People.

IX. And also sundry grievous Offenders, by colour thereof claiming an Exemption, have escaped the Punishments due to them by the Laws and Statutes of this Your Realm, by reason that divers of your Officers and Ministers of Justice have unjustly refused or forborn to proceed against such Offenders according to the same Laws and Statutes, upon Pretence that the said Offenders were punishable only by Martial Law, and by Authority of such Commissions as aforesaid: Which Commissions, and all other of like Nature, are wholly and directly contrary to the said Laws and Statutes of this Your Realm:

XI. All which they most humbly pray of Your most excellent Majesty as their Rights and Liberties according to the Laws and Statutes of this Realm; and that Your Majesty would also vouchsafe to declare, that the Awards, Doings and Proceedings, to the Prejudice of Your People in any of the Premises shall not be drawn hereafter into Consequence or Example; and that Your Majesty would be also graciously pleased, for the further Comfort and Safety of Your People, to declare Your Royal Will and Pleasure, that in the Things aforesaid all your Officers and Ministers shall serve You according to the Laws and Statutes of this Realm, as they tender the Honour of Your Majesty, and the Prosperity of this Kingdom.
Handout D: Excerpts from the English Bill of Rights (1689)

That the pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament is illegal...

That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal...

That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law...

That the subjects which are Protestants may have arms for their defense suitable to their conditions and as allowed by law...

That election of members of Parliament ought to be free...

That freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament...

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted...

That jurors ought to be duly impaneled and returned...

And that for redress of all grievances, and for the amending, strengthening and preserving of the laws, Parliaments ought to be held frequently.
### Directions
After reading the documents, complete the table and answer the questions below.

<table>
<thead>
<tr>
<th>Document Name</th>
<th>Summarize</th>
<th>How does this document promote justice?</th>
<th>How is this document similar to the other documents?</th>
<th>How is this document different from the other documents?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Magna Carta (1215)</td>
<td></td>
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<tr>
<td>The Mayflower Compact (1620)</td>
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<td>The Petition of Right (1628)</td>
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<tr>
<td>The English Bill of Rights (1689)</td>
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</tbody>
</table>

What ideas from these documents were used by the Founders in the American Founding Documents like the Declaration of Independence, the Articles of Confederation, the United States Constitution, or the United States Bill of Rights?
Sec. 124. The great and chief end, therefore, of men’s uniting into commonwealths, and putting themselves under government, is the preservation of their property.

First, There wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them: for though the law of nature be plain and intelligible to all rational creatures...

Sec. 125. Secondly, In the state of nature there wants a known and indifferent judge, with authority to determine all differences according to the established law...

Sec. 126. Thirdly, In the state of nature there often wants power to back and support the sentence when right, and to give it due execution...

Sec. 131. But though men, when they enter into society, give up the equality, liberty, and executive power they had in the state of nature, into the hands of the society... to preserve [themselves, their] liberty and property...

[T]he power of the society, or legislative constituted by them, can never be supposed to extend farther, than the common good; but is obliged to secure everyone’s property .... And all this to be directed to no other end, but the peace, safety, and public good of the people.
Handout G: Excerpts from Montesquieu’s *The Spirit of the Laws* (1748)

In every government there are three sorts of power; the **legislative**; the **executive**... [and] the latter we shall call the **judiciary** power...

There would be an end of every thing were the same man, or the same body...to exercise those three powers that of enacting laws, that of executing the public **resolutions**, and that of judging crimes...

The executive power ought to be in the hands of a **monarch**; because this branch of government, which has always need of **expedition**, is better **administered** by one than by many: Whereas, whatever depends on the legislative power, is oftentimes better **regulated** by many than by a single person...

When once an army is established, it ought not to depend immediately on the legislative, but on the executive power, and this from the very nature of the thing; its business consisting more in action than in **deliberation**.

From a manner of thinking that **prevails** amongst mankind, [armies] set a higher value upon courage than **timorousness**, on activity than **prudence**, on strength than counsel. Hence, the army will ever despise a senate, and respect their own officers...
Handout H: Compare and Contrast Locke and Montesquieu

Directions: After reading the excerpts from Locke and Montesquieu, complete the table below. Think about the ways in which each author hopes to promote and protect liberty.

<table>
<thead>
<tr>
<th>Locke</th>
<th>Montesquieu</th>
</tr>
</thead>
</table>

How are Locke's and Montesquieu's understandings of liberty similar? How are they different?

_______________________________________________________________________________________________________________
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Preamble Posters

**Directions to teacher:** Put these phrases at the top of poster paper around the room. Each line should go on a separate sheet of poster paper.

*We the people of the United States,*

*in order to form a more perfect union,*

*establish justice,*

*insure domestic tranquility,*

*provide for the common defense,*

*promote the general welfare,*

*and secure the blessings of liberty*
Handout A: The United States Constitution

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

The Legislative Branch

Bicameral (two-house) Congress

Election of Representatives

Article I

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one,
Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

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

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

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.
Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

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

Section 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the
same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time: and no person holding any office under the United States, shall be a member of either House during his continuance in office.

*The passage of bills*

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

*Powers of Congress*

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the
common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto Law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present,
emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States,
directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor
Powers of the President

Section 2. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Communication with Congress and other responsibilities of the President

Section 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he
Removal from office

Section 4. The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

The Judicial Branch

Composition of the Judicial Branch

Article III

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;— between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not
### Definition of treason

*Section 3.* Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

### Relationship among states

#### States accept laws and contracts of other states

*Article IV*  

*Section 1.* Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

#### The rights and responsibilities of U.S. citizenship are the same in all states

*Section 2.* The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

### Admission of new states

*Section 3.* New states may be admitted by the Congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all
Protection of state governments

Constitutional amendments

Supremacy of the Constitution; No religious tests for federal office

needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Article V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive
and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

**Article VII**

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven and of the independence of the United States of America the twelfth. In witness whereof We have hereunto subscribed our Names,

**Signatures**

- **New York:** Alexander Hamilton, Wilson, Gouv Morris
- **New Jersey:** Wil: Livingston, Geo: Read, Gunning Beddor jun, John Dickinson, Richard Bassett, Jaco: Broom
- **New Hampshire:** John Langdon, Nathaniel Gorham, Rufus King
- **Pennsylvania:** B. Franklin, Thomas Mifflin, Robt. Morris, Geo. Clymer, Thos. FitzSimons, Jared Ingersoll, James
- **Maryland:** James McHenry, Dan of St Thos. Jenifer, Danl Carroll
- **Virginia:** John Blair–, James Madison Jr.
- **North Carolina:** Wm. Blount, Richd. Dobbs Spaight, Hu Williamson
- **South Carolina:** J. Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler
- **Georgia:** William Few, Abr Baldwin

Ratification of the Constitution
Handout B: A Second Study

**Directions:** Read your quotation and locate it within your assigned sections of the Constitution. Read the sections carefully and fill in the chart with a five to six word summary. Then, in your next group, complete the chart.

<table>
<thead>
<tr>
<th>Article I, A</th>
<th>Article I, B</th>
<th>Article I, C</th>
<th>Article II</th>
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<tbody>
<tr>
<td><strong>Purpose:</strong></td>
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<td>Section 2</td>
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<td>Article III</td>
<td>Articles IV and V</td>
<td>Articles VI and VII</td>
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<td><strong>Article VII</strong></td>
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<td><strong>Article V</strong></td>
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</tbody>
</table>
Handout C: Constitution Cube

**Directions:** Cut out and fold into a cube. Roll to determine which Constitutional Principle to find an example of in the Constitution.

```
Representative Government

Limited Government

Separation of Powers / Checks and Balances

Inalienable Rights

Consent of the Governed

Federalism
```
Handout A: Excerpts from Hobbes’s *The Leviathan* and from Locke’s *Second Treatise of Civil Government*

**Directions:** Read, discuss, and analyze your assigned section, either Hobbes or Locke. Use underlining, marginal notes, and other reading skills to find the main ideas and put the excerpt in your own words. Next, you will share your section with students who read the other author’s work. Then, you will work together to complete the table and answer the questions on Handout B.

**THOMAS HOBBES**

*BRACKETED PHRASES ARE ADDED AS AN AID TO UNDERSTANDING.*

In a state of nature] Hereby it is manifest that during the time men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war as is of every man against every man. …

In such condition there is no place for industry, because the fruit thereof is uncertain: … and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short.

THE right of nature … is the liberty each man hath to use his own power as he will himself for the preservation of his own nature; that is to say, of his own life; and consequently, of doing anything which, in his own judgment and reason, he shall conceive to be the aptest means thereunto [the best method to preserve his life]…

And because the condition of man … is a condition of war of every one against every one, in which case every one is governed by his own reason, … it followeth that in such a condition every man has a right to every thing, even to one another’s body. And therefore, as long as this natural right of every man to every thing endureth, there can be no security to any man, how strong or wise soever he be, of living out the time which nature ordinarily alloweth men to live. And consequently it is a precept, or general rule of reason: that every man ought to endeavour peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek and use all helps and advantages of war. The first branch of which rule containeth the first and fundamental law of nature, which is: to seek peace and follow it. The second, the sum of the right of nature, which is: by all means we can to defend ourselves. …

Right is laid aside, either by simply renouncing it, or by transferring it to another … And when a man hath in either manner abandoned or granted away his right, [as in consenting to obey a government that helps protect his life] then is he said to be obliged, or bound, not to hinder those to whom such right is granted, or abandoned, from the benefit of it…

The mutual transferring of right is that which men call contract…

If a covenant be made wherein neither of the
parties perform presently, but trust one another, in the condition of mere nature (which is a condition of war of every man against every man) upon any reasonable suspicion, it is void: but if there be a common power set over them both, with right and force sufficient to compel performance, it is not void…

Therefore before the names of Just and Unjust can have place, there must be some coercive Power, to compel men equally to the performance of their Covenants..., to make good that Propriety, which by mutual contract men acquire, in recompense of the universal Right they abandon: and such power there is none before the erection of the Commonwealth.
§ 4.

TO understand political power right, and derive it from its original, we must consider what state all men are naturally in, and that is, a state of perfect freedom to order their actions and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature; without asking leave, or depending upon the will of any other man. A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another...

§ 6.

But though this be a state of liberty, yet it is not a state of license: though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions... Every one... may not, unless it be to do justice to an offender, take away or impair the life, or what tends to the preservation of life, the liberty, health, limb, or goods of another...

§ 22.

THE natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man, in society, is to be under no other legislative power, but that established, by consent, in the commonwealth ... freedom of men under government is, to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man: as freedom of nature is, to be under no other restraint but the law of nature...

§ 27.

Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this nobody has any right to but himself. The labor of his body, and the work of his hands, we may say, are properly his...

§ 87.

[T]here and there only is political society, where every one of the members hath quitted his natural power, resigned it up into the hands of the community in all cases that excludes him not from appealing for protection to the law established by it. And thus all private judgment of every particular member being excluded, the community comes to be umpire, by settled standing rules, indifferent, and the same to all parties...

§ 123.

IF man in the state of nature be so free, as has been said; if he be absolute lord of his own person and possessions, equal to the greatest, and subject to nobody, why will he part with his freedom? Why will he give up his empire, and subject himself to the dominion and control of any other power? To which it is obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion
of others; for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very unsecure. This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: and it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual preservation of their lives, liberties, and estates, which I call by the general name, property.
### Instructions

Work with your assigned groups to complete the table and answer the questions below.

<table>
<thead>
<tr>
<th>What is man's natural condition?</th>
<th>What are man's natural rights?</th>
<th>What is the proper role of government?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Thomas Hobbes</strong> (1588–1679)</td>
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<tr>
<td><em>Leviathan</em> (1660)</td>
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<tr>
<td><strong>John Locke</strong> (1632–1704)</td>
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<td></td>
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<tr>
<td><em>Second Treatise on Civil Government</em> (1690)</td>
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</tbody>
</table>

1. Both of these writers are known as social contract theorists. In which, if either, conception of society do people have more natural rights? More legal rights?

2. On what points do they have the most in common? On what points do they differ the most?

3. Which theorist’s ideas do you think had greater influence on the Founding of the United States? Why?

4. Identify and discuss some especially memorable passages from both authors. How do these readings help you better understand natural rights and legal rights?
Handout A: Hobbes, Locke, Rousseau, and Consent of the Governed

Thomas Hobbes, *Leviathan* (1660)

CHAPTER XVII: The only way to erect such a common power, as may be able to defend them from the invasion of foreigners, and the injuries of one another, and thereby to secure them in such sort as that by their own industry and by the fruits of the earth they may nourish themselves and live contentedly, is to confer all their power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices, unto one will: which is as much as to say, to appoint one man, or assembly of men, to bear their person; and every one to own and acknowledge himself to be author of whatsoever he that so beareth their person shall act, or cause to be acted, in those things which concern the common peace and safety; and therein to submit their wills, every one to his will, and their judgements to his judgement. This is more than consent, or concord; it is a real unity of them all in one and the same person, made by covenant of every man with every man, in such manner as if every man should say to every man: I authorise and give up my right of governing myself to this man, or to this assembly of men, on this condition; that thou give up, thy right to him, and authorise all his actions in like manner.

John Locke, *Second Treatise of Civil Government* (1690)

140. It is true, governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent, i.e. the consent of the majority, giving it either by themselves, or their representatives chosen by them: for if any one shall claim a *power to lay* and *levy taxes* on the people, by his own authority, and without such consent of the people, he thereby invades the *fundamental law of property*, and subverts the end of government: for what property have I in that, which another may by right take, when he pleases, to himself?


2. VOTING: There is but one law which, from its nature, needs unanimous consent. This is the social compact; for civil association is the most voluntary of all acts. Every man being born free and his own master, no one, under any pretext whatsoever, can make any man subject without his consent. To decide that the son of a slave is born a slave is to decide that he is not born a man...

If then there are opponents when the social compact is made, their opposition does not invalidate the contract, but merely prevents them from being included in it. They are foreigners among citizens. When the State is instituted, residence constitutes consent; to dwell within its territory is to submit to the Sovereign...

Apart from this primitive contract, the vote of the majority always binds all the rest. This follows from the contract itself. But it is asked how a man can be both free and forced to conform to wills that are not his own. How are the opponents at once free and subject to laws they have not agreed to?
Handout B: Comparing Philosophies

Directions: Use the Venn diagram below to compare and contrast the philosophies of Hobbes, Locke, and Rousseau. Then answer the question below.

In what ways did the American Founders use the philosophies of Hobbes, Locke, and Rousseau in writing the Declaration of Independence, the Constitution, and the Bill of Rights?
Handout A: Excerpts from *Federalist No. 62*

**Directions:** Use underlining, margin notes, and other reading skills to analyze these passages. Be ready to explain the significance of rule of law in your own words. [Bracketed phrases are added as an aid to understanding.]

... It is a misfortune incident to republican government, though in a less degree than to other governments, that those who administer it may forget their obligations to their constituents, and prove unfaithful to their important trust...

A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained...

But a continual change even of good measures is inconsistent with every rule of prudence and every prospect of success...

In the first place, [unstable government] forfeits the respect and confidence of other nations, and all the advantages connected with national character...

The internal effects of a mutable policy are still more calamitous. It poisons the blessing of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?

Another effect of public instability is the unreasonable advantage it gives to the sagacious [crafty], the enterprising, and the moneyed few over the industrious and uninformed mass of the people. Every new regulation concerning commerce or revenue, or in any way affecting the value of the different species of property, presents a new harvest to those who watch the change, and can trace its consequences; a harvest, reared not by themselves, but by the toils and cares of the great body of their fellow-citizens. This is a state of things in which it may be said with some truth that laws are made for the few, not for the many.

In another point of view, great injury results from an unstable government ...What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed? ... In a word, no great improvement or laudable enterprise can go forward which requires the auspices of a steady system of national policy.

But the most deplorable effect of all is that diminution of attachment and reverence which steals into the hearts of the people, .... No government, any more than an individual, will long be respected without being truly respectable; nor be truly respectable, without possessing a certain portion of order and stability.
Handout B: Quotes about Rule of Law

**Directions:** Read the following quotes and put them in your own words. What concepts do they all have in common? Next, use your work on **Handouts A and B** to compose your own definition of “rule of law” and explain why this constitutional principle is essential to the promotion of liberty.

1. “They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court, and the countryman at plow.”
   —John Locke, *Second Treatise of Government*, 1690

2. “But nothing can be more absurd than to say, that one man has an absolute power above law to govern according to his will.”
   —Algernon Sidney, *Discourses Concerning Government*, 1698

3. “No legislative, supreme or subordinate, has a right to make itself arbitrary.”
   —James Otis, “Rights of the British Colonies Asserted and Proved,” 1764

4. “But can his majesty thus put down all law under his feet? Can he erect a power superior to that which erected himself? He has done it indeed by force; but let him remember that force cannot give right.”
   —Thomas Jefferson, “A Summary View of the Rights of British America,” 1774

5. “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”
   —The Constitution of the United States, 1787

6. “There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void.”
   —Alexander Hamilton, *Federalist No. 78*, 1788

7. “No legislative act, therefore, contrary to the Constitution, can be valid.”
   —Alexander Hamilton, *Federalist No. 78*, 1788

8. “To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained?”

Write your own definition of “rule of law,” and explain why it is essential to the promotion of liberty.
Handout C: The Bill of Rights

Amendment I  Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II  A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III  No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV  The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V  No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI  In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII  In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII  Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX  The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X  The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.
Handout D: Analysis of Amendments 4, 5, 6, 7, and 8

**Directions:** Analyze the Bill of Rights (**Handout C**) to complete this table.

<table>
<thead>
<tr>
<th>Amendment</th>
<th>List specific rights protected</th>
<th>Explain why each right is important to the promotion of liberty.</th>
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</thead>
<tbody>
<tr>
<td>Amendment 4</td>
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<tr>
<td>Amendment 5</td>
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<td>Amendment 7</td>
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<tr>
<td>Amendment 8</td>
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</table>
Handout E: Examples of Search and Seizure Cases

Directions: Apply the principle of rule of law to determine if these search and seizure cases violated Fourth Amendment protections against unlawful search and seizure.

1. Olmstead v. United States (1927)

The police had suspected for several years that Roy Olmstead, a resident of Washington state, was involved in smuggling and selling alcohol in violation of the nation’s Prohibition laws. Without first getting a warrant, the government wiretapped phones that they knew Olmstead used in his business, even though wiretapping itself was a violation of Washington state law. Based on evidence obtained by listening to Olmstead’s conversations, the federal government prosecuted and won a conviction against him for illegally selling alcohol.

Olmstead maintained that the wiretapping amounted to a warrantless search and seizure, and evidence obtained through this illegal search should not be used against him. The prosecutors argued that they had not entered Olmstead’s property or conducted a physical search. The wiretap was completed from the outside of his property by accessing telephone lines that were freely available.

Was this warrantless electronic “search” of Olmstead’s conversations a violation of his Fourth Amendment protection against unreasonable search and seizure and his Fifth Amendment protection against self-incrimination?

☐ Yes ☐ No

Why? ________________________________ Why not? ________________________________
2. **Mapp v. Ohio (1961)**

Cleveland police, acting on a tip that a bombing suspect had been hiding in the home of Dollree Mapp, demanded entrance. She asked for their warrant and called her lawyer. After several hours and the arrival of additional officers, police claimed to have a warrant, and officers forced their way into the house.

Mapp still demanded to see the warrant. One officer held up a piece of paper, claiming it was a warrant. She grabbed it and put it inside her clothing. An officer recovered it and they carried out a complete search of the house.

The officers found a trunk of “lewd and lascivious” books, pictures, and photographs in Mapp's basement, along with documentation related to illegal gambling. Mapp was arrested for violating Ohio's criminal law prohibiting the possession of obscene materials.

At trial, the court found her guilty of possessing the obscene materials based on the evidence presented by police. No warrant was ever produced.

Dollree Mapp raised a First Amendment claim, saying she had a right to possess the books. But in the U.S. Supreme Court, the Justices did not address her First Amendment claim. They instead focused on the warrantless search.

**Was this warrantless search of Mapp’s house a violation of her Fourth Amendment protection against unreasonable search and seizure?**

☐ Yes ☐ No

Why? ________________________________  Why not? ________________________________

3. **Florence v. The Board of Chosen Freeholders (2011)**

Albert Florence was arrested on a warrant for a traffic violation, even though he had already paid the fine. In jail, he was strip searched twice in seven days. Florence filed a lawsuit against jailers, maintaining that the jailhouse searches were unreasonable because he was being held for failure to pay a fine, which is not a crime in New Jersey. Jail officials argued that it was reasonable to search everyone being jailed, even for minor offenses, and even if there is no suspicion that the person may be concealing drugs or a weapon. The need for jailhouse security, they claimed, outweighed any prisoner’s rights against unreasonable search and seizure.

**Did these suspicionless searches violate Florence’s Fourth Amendment protection against unreasonable search and seizure?**

☐ Yes ☐ No

Why? ________________________________  Why not? ________________________________
Handout F: Cruel and Unusual Punishment?

Directions: Review scenarios from Supreme Court cases and apply the principle of the rule of law to determine if the sentence from each case could be considered cruel and unusual punishment.


A Los Angeles police officer arrested Lawrence Robinson one night because he noticed tracks on Robinson’s arms similar to those of drug addicts. Robinson was not doing anything illegal or under the influence of drugs at the time, but he did admit to the officer that he sometimes used illegal drugs, and a California law made it a misdemeanor to be a drug addict. The next morning, another officer with long experience in the Narcotics Division reached the conclusion that the marks on Robinson’s arms were the result of injections of illegal drugs. At his trial, Robinson denied having used illegal drugs and stated that the marks on his arms were an allergic reaction to a treatment he had received when in the military. However, the jury found him guilty of being an addict and sentenced him to 90 days in prison.

Though he denied being an addict, Robinson believed that the California law, which did not require proof that the defendant bought or used illegal drugs in California, nor that he have any drugs in his possession, was a violation of his 8th and 14th Amendment protections against cruel and unusual punishment.

Given these circumstances, was Robinson’s imprisonment upon being convicted of the condition of drug addiction a violation of his Eighth and Fourteenth Amendment protections against cruel and unusual punishment?

☐ Yes ☐ No

Why? ___________________________________________ Why not?_________________________________________
2. Furman v. Georgia (1972)

In 1967, William Furman broke into a home during the night intending to carry out a burglary. The homeowner heard the noises from the kitchen and came to investigate. Furman turned to flee, and ran out the kitchen door. Furman said he tripped, dropping his gun, which accidentally discharged. Tragically, the shot struck the homeowner in the chest, killing him instantly. Since the murder took place during the commission of a felony, Furman was eligible to receive the death penalty under Georgia law, even though the shooting itself was an accident. Furman was poor, uneducated, and mentally ill, and the jury found him guilty and sentenced him to death in a one-day trial.

Given these circumstances, did the death penalty for Furman violate his Eighth Amendment protection against cruel and unusual punishment?

☐ Yes ☐ No

Why? ___________________________________________  Why not? ___________________________________________


The Furman decision (1972) invalidated all previously enacted death penalty laws in the U.S. In its post-Furman statute, the Georgia legislature sought to correct the arbitrary, “freakish,” or “random” nature of the imposition of the death penalty in Georgia. This new law provided guidelines regarding the jury’s consideration of both aggravating and mitigating factors, and it required mandatory review by the Georgia Supreme Court of any death penalty sentence.

In 1974 Troy Leon Gregg was convicted of having committed armed robbery and murder of two men who had given him and a companion a ride when they were hitchhiking the previous year. The trial judge was careful to follow all the new law’s guidelines in conducting Gregg’s case. Before it could impose the death penalty, the jury must find at least one of 10 different aggravating circumstances in the crime. Gregg’s jury found that there were 2 aggravating circumstances: he had committed the murders during the commission of other capital crimes (armed robbery), and for the purpose of receiving the victims’ property. The Georgia Supreme Court found that the sentences for murder did not result from prejudice or other arbitrary factors, and upheld the jury’s verdict and sentence.

Given these circumstances, did the death penalty for Gregg violate his Eighth Amendment protection against cruel and unusual punishment?

☐ Yes ☐ No

Why? ___________________________________________  Why not? ___________________________________________
ARTICLE I, A

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

b. The House of Representatives shall be composed of members chosen every second year by the people of the several states...

c. The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

ARTICLE I, B

a. ...and for any speech and debate in either House, they (Senators and Representatives) shall not be questioned in any other place.

b. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States...

c. [If the President vetoes a law, it] shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

ARTICLE I, C

a. Congress shall have the power ... To regulate commerce with foreign nations, and among the several states, and with the Indian tribes...

b. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it. ...No bill of attainder or ex post facto Law shall be passed.

c. No title of nobility shall be granted by the United States...

ARTICLE II

a. The executive power shall be vested in a President of the United States of America.

b. Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress...

c. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States...
### ARTICLE III

a. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

b. The judicial power shall extend to all cases, in law and equity, arising under this Constitution ... to controversies between two or more states.

c. The trial of all crimes, except in cases of impeachment, shall be by jury.

### ARTICLE IV AND V

a. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

b. The United States shall guarantee to every state in this union a republican form of government...

c. The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution ... or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments...

### ARTICLE VI AND VII

a. This Constitution ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

b. ...no religious test shall ever be required as a qualification to any office or public trust under the United States.

c. The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.
### Handout B: How Is Government Limited in the Constitution?

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The Necessary and Proper Clause gives Congress the power to “make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States.” It is not a free-standing grant of power, but rather was intended to give Congress the power to enact laws needed to “carry into execution” the various powers granted to the federal government by other parts of the Constitution.

The wording of the Clause suggests that a law authorized by it must meet two separate requirements: it must be “necessary” to the execution of some power granted to the federal government, and also “proper.” Since at least the 1790s, debate has raged over the meaning of these two terms. In the early republic, debate over the interpretation of the Clause focused on the constitutionality or lack thereof of the First Bank of the United States. When the Bank was first proposed in 1790, James Madison and Thomas Jefferson argued that its establishment was not authorized by the Necessary and Proper Clause because the word “necessary” should be interpreted to include only such measures as are truly essential to the implementation of other federal powers. By contrast, Secretary of the Treasury Alexander Hamilton defended the Bank, arguing that “necessary” should be interpreted to include any law that is “useful” or “convenient.” The issue of the constitutionality of the Bank did not reach the Supreme Court until 1819, when the justices decided the case of McCulloch v. Maryland.

While the Supreme Court has addressed the meaning of the word, “necessary” in a number of cases over time, it has focused far less attention to the meaning of “proper.” Controversy over both terms continues.
The Congress shall have Power ...To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

1. Underline the most important words and phrases in this passage and put them in your own words.
My object is to consider that undefined, unbounded and immense power which is comprised in the following clause: “And, to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States; or in any department or offices [officer] thereof.” Under such a clause as this can any thing be said to be reserved and kept back from Congress? …[B]esides the powers already mentioned, other powers may be assumed hereafter as contained by implication in this constitution. The Congress shall judge of what is necessary and proper in all these cases and in all other cases — in short in all cases whatsoever.

Where then is the restraint? How are Congress bound down to the powers expressly given? What is reserved or can be reserved?

1. State in your own words the main concerns of the author of this passage.
Handout F: Brutus No. 1 (1787)

The legislature of the United States are vested with the great and uncontrollable powers, of laying and collecting taxes, duties, imposts, and excises. ...And are by this clause invested with the power of making all laws, proper and necessary, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the state governments, and reduce this country to one single government.

It is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with power, are ever disposed to increase it, and to acquire a superiority over every thing that stands in their way. This disposition, which is implanted in human nature, will operate in the federal legislature to lessen and ultimately to subvert the state authority, and having such advantages, will most certainly succeed, if the federal government succeeds at all.

1. According to Brutus, what governments are in danger?

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2. What observation does Brutus make about human nature?

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3. What does Brutus say will necessarily happen if the federal government is to succeed at all? Why?

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Handout G: Federalist No. 33 by Alexander Hamilton (1788)

These two clauses [the “necessary and proper clause” and the “supremacy clause”] have been the sources of much virulent invective and petulant declamation against the proposed constitution, they have been held up to the people, in all the exaggerated colours of misrepresentation, as the pernicious engines by which their local governments were to be destroyed and their liberties exterminated — as the hideous monster whose devouring jaws would spare neither sex nor age, nor high nor low, nor sacred nor profane; and yet strange as it may appear, after all this clamour, to those who may not have happened to contemplate them in the same light, it may be affirmed with perfect confidence, that the constitutional operation of the intended government would be precisely the same, if these clauses were entirely obliterated, as if they were repeated in every article...

If the Federal Government should overpass the just bounds of its authority, and make a tyrannical use of its powers; the people whose creature it is must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution, as the exigency may suggest and prudence justify. The propriety of a law in a constitutional light, must always be determined by the nature of the powers upon which it is founded.

1. **According to Hamilton, why are these two clauses not cause for concern?**

   2. **What must the people do if the government becomes tyrannical?**
But if the government be national with regard to the operation of its powers, it changes its aspect again when we contemplate it in relation to the extent of its powers. The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. ...In this relation, then, the proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality...

1. According to Madison, the government established by the Constitution has “an indefinite supremacy over all persons and things” as long as what?

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2. What does Madison say is the role of the tribunal (the Supreme Court) in deciding questions between the federal and state governments?

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Handout H: *Federalist No. 39* by James Madison (1788)
In every government there are three sorts of power: the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law.

By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies, establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state.

The political liberty of the subject is a tranquillity of mind arising from the opinion each person has of his safety. In order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another.

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression...

In what a situation must the poor subject be in those republics! The same body of magistrates are possessed, as executors of the laws, of the whole power they have given themselves in quality of legislators. They may plunder the state by their general determinations; and as they have likewise the judiciary power in their hands, every private citizen may be ruined by their particular decisions.

The whole power is here united in one body; and though there is no external pomp that indicates a despotic sway, yet the people feel the effects of it every moment.

The judiciary power ought not to be given to a standing senate; it should be exercised by persons taken from the body of the people at certain times of the year, and consistently with a form and manner prescribed by law, in order to erect a tribunal that should last only so long as necessity requires...

In accusations of a deep and criminal nature, it is proper the person accused should have the privilege of choosing, in some measure, his judges, in concurrence with the law; or at least he should have a right to except against so great a number that the remaining part may be deemed his own choice...

If the legislature leaves the executive power in possession of a right to imprison those subjects who can give security for their good behaviour,
there is an end of liberty; unless they are taken up, in order to answer without delay to a capital crime, in which case they are really free, being subject only to the power of the law.

But should the legislature think itself in danger by some secret conspiracy against the state, or by a correspondence with a foreign enemy, it might authorise the executive power, for a short and limited time, to imprison suspected persons, who in that case would lose their liberty only for a while, to preserve it for ever...

As in a country of liberty, every man who is supposed a free agent ought to be his own governor; the legislative power should reside in the whole body of the people. But since this is impossible in large states, and in small ones is subject to many inconveniences, it is fit the people should transact by their representatives what they cannot transact by themselves.

The inhabitants of a particular town are much better acquainted with its wants and interests than with those of other places; and are better judges of the capacity of their neighbours than of that of the rest of their countrymen. The members, therefore, of the legislature should not be chosen from the general body of the nation; but it is proper that in every considerable place a representative should be elected by the inhabitants.

The great advantage of representatives is, their capacity of discussing public affairs. For this the people collectively are extremely unfit, which is one of the chief inconveniences of a democracy...

All the inhabitants of the several districts ought to have a right of voting at the election of a representative, except such as are in so mean a situation as to be deemed to have no will of their own...

Neither ought the representative body to be chosen for the executive part of government, for which it is not so fit; but for the enacting of laws, or to see whether the laws in being are duly executed, a thing suited to their abilities, and which none indeed but themselves can properly perform...

In such a state there are always persons distinguished by their birth, riches, or honours: but were they to be confounded with the common people, and to have only the weight of a single vote like the rest, the common liberty would be their slavery, and they would have no interest in supporting it, as most of the popular resolutions would be against them. The share they have, therefore, in the legislature ought to be proportioned to their other advantages in the state; which happens only when they form a body that has a right to check the licentiousness of the people, as the people have a right to oppose any encroachment of theirs.

The legislative power is therefore committed to the body of the nobles, and to that which represents the people, each having their assemblies and deliberations apart, each their separate views and interests.

Of the three powers above mentioned, the judiciary is in some measure next to nothing: there remain, therefore, only two; and as these have need of a regulating power to moderate them, the part of the legislative body composed of the nobility is extremely proper for this purpose...

The executive power ought to be in the hands of a monarch, because this branch of government, having need of despatch, is better administered by one than by many: on the other hand, whatever depends on the legislative power is
oftentimes better regulated by many than by a single person.

But if there were no monarch, and the executive power should be committed to a certain number of persons selected from the legislative body, there would be an end then of liberty; by reason the two powers would be united, as the same persons would sometimes possess, and would be always able to possess, a share in both.

Were the legislative body to be a considerable time without meeting, this would likewise put an end to liberty. For of two things one would naturally follow: either that there would be no longer any legislative resolutions, and then the state would fall into anarchy; or that these resolutions would be taken by the executive power, which would render it absolute.

It would be needless for the legislative body to continue always assembled. This would be troublesome to the representatives, and, moreover, would cut out too much work for the executive power, so as to take off its attention to its office, and oblige it to think only of defending its own prerogatives, and the right it has to execute.

Again, were the legislative body to be always assembled, it might happen to be kept up only by filling the places of the deceased members with new representatives; and in that case, if the legislative body were once corrupted, the evil would be past all remedy. When different legislative bodies succeed one another, the people who have a bad opinion of that which is actually sitting may reasonably entertain some hopes of the next: but were it to be always the same body, the people upon seeing it once corrupted would no longer expect any good from its laws; and of course they would either become desperate or fall into a state of indolence.

The legislative body should not meet of itself. For a body is supposed to have no will but when it is met; and besides, were it not to meet unanimously, it would be impossible to determine which was really the legislative body; the part assembled, or the other. And if it had a right to prorogue itself, it might happen never to be prorogued; which would be extremely dangerous, in case it should ever attempt to encroach on the executive power. Besides, there are seasons, some more proper than others, for assembling the legislative body: it is fit, therefore, that the executive power should regulate the time of meeting, as well as the duration of those assemblies, according to the circumstances and exigencies of a state known to itself.

Were the executive power not to have a right of restraining the encroachments of the legislative body, the latter would become despotic; for as it might arrogate to itself what authority it pleased, it would soon destroy all the other powers.

But it is not proper, on the other hand, that the legislative power should have a right to stay the executive. For as the execution has its natural limits, it is useless to confine it; besides, the executive power is generally employed in momentary operations. The power, therefore, of the Roman tribunes was faulty, as it put a stop not only to the legislation, but likewise to the executive part of government; which was attended with infinite mischief.

But if the legislative power in a free state has no right to stay the executive, it has a right and ought to have the means of examining in what manner its laws have been executed...
But whatever may be the issue of that examination, the legislative body ought not to have a power of arraigning the person, nor, of course, the conduct, of him who is entrusted with the executive power. His person should be sacred, because as it is necessary for the good of the state to prevent the legislative body from rendering themselves arbitrary, the moment he is accused or tried there is an end of liberty.

In this case the state would be no longer a monarchy, but a kind of republic, though not a free government. But as the person entrusted with the executive power cannot abuse it without bad counsellors, and such as have the laws as ministers, though the laws protect them as subjects, these men may be examined and punished...

The executive power, pursuant of what has been already said, ought to have a share in the legislature by the power of rejecting, otherwise it would soon be stripped of its prerogative. But should the legislative power usurp a share of the executive, the latter would be equally undone.

If the prince were to have a part in the legislature by the power of resolving, liberty would be lost. But as it is necessary he should have a share in the legislature for the support of his own prerogative, this share must consist in the power of rejecting.

The change of government at Rome was owing to this, that neither the senate, who had one part of the executive power, nor the magistrates, who were entrusted with the other, had the right of rejecting, which was entirely lodged in the people.

Here then is the fundamental constitution of the government we are treating of. The legislative body being composed of two parts, they check one another by the mutual privilege of rejecting. They are both restrained by the executive power, as the executive is by the legislative.

These three powers should naturally form a state of repose or inaction. But as there is a necessity for movement in the course of human affairs, they are forced to move, but still in concert.

As the executive power has no other part in the legislative than the privilege of rejecting, it can have no share in the public debates. It is not even necessary that it should propose, because as it may always disapprove of the resolutions that shall be taken, it may likewise reject the decisions on those proposals which were made against its will...

Were the executive power to determine the raising of public money, otherwise than by giving its consent, liberty would be at an end; because it would become legislative in the most important point of legislation.
To the People of the State of New York:

HAVING reviewed the general form of the proposed government and the general mass of power allotted to it, I proceed to examine the particular structure of this government, and the distribution of this mass of power among its constituent parts. One of the principal objections inculcated by the more respectable adversaries to the Constitution, is its supposed violation of the political maxim, that the legislative, executive, and judiciary departments ought to be separate and distinct. In the structure of the federal government, no regard, it is said, seems to have been paid to this essential precaution in favor of liberty. The several departments of power are distributed and blended in such a manner as at once to destroy all symmetry and beauty of form, and to expose some of the essential parts of the edifice to the danger of being crushed by the disproportionate weight of other parts. No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal Constitution, therefore, really chargeable with the accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself, however, that it will be made apparent to every one, that the charge cannot be supported, and that the maxim on which it relies has been totally misconceived and misapplied. In order to form correct ideas on this important subject, it will be proper to investigate the sense in which the preservation of liberty requires that the three great departments of power should be separate and distinct. The oracle who is always consulted and cited on this subject is the celebrated Montesquieu. If he be not the author of this invaluable precept in the science of politics, he has the merit at least of displaying and recommending it most effectually to the attention of mankind. Let us endeavor, in the first place, to ascertain his meaning on this important subject. The British Constitution was to Montesquieu what Homer has been to the didactic writers on epic poetry. As the latter have considered the work of the immortal bard as the perfect model from which the principles and rules of the epic art were to be drawn, and by which all similar works were to be judged, so this great political critic appears to have viewed the Constitution of England as the standard, or to use his own expression, as the mirror of political liberty; and to have delivered, in the form of elementary truths, the several characteristic principles of that particular system. That we may be sure, then, not to mistake his meaning in this case, let us recur to the source from which the maxim was drawn.
On the slightest view of the British Constitution, we must perceive that the legislative, executive, and judiciary departments are by no means totally separate and distinct from each other. The executive magistrate forms an integral part of the legislative authority. He alone has the prerogative of making treaties with foreign sovereigns, which, when made, have, under certain limitations, the force of legislative acts. All the members of the judiciary department are appointed by him, can be removed by him on the address of the two Houses of Parliament, and form, when he pleases to consult them, one of his constitutional councils. One branch of the legislative department forms also a great constitutional council to the executive chief, as, on another hand, it is the sole depositary of judicial power in cases of impeachment, and is invested with the supreme appellate jurisdiction in all other cases. The judges, again, are so far connected with the legislative department as often to attend and participate in its deliberations, though not admitted to a legislative vote. From these facts, by which Montesquieu was guided, it may clearly be inferred that, in saying “There can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates,” or, “if the power of judging be not separated from the legislative and executive powers,” he did not mean that these departments ought to have no PARTIAL AGENCY in, or no CONTROL over, the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this, that where the WHOLE power of one department is exercised by the same hands which possess the WHOLE power of another department, the fundamental principles of a free constitution are subverted. This would have been the case in the constitution examined by him, if the king, who is the sole executive magistrate, had possessed also the complete legislative power, or the supreme administration of justice; or if the entire legislative body had possessed the supreme judiciary, or the supreme executive authority.

This, however, is not among the vices of that constitution. The magistrate in whom the whole executive power resides cannot of himself make a law, though he can put a negative on every law; nor administer justice in person, though he has the appointment of those who do administer it. The judges can exercise no executive prerogative, though they are shoots from the executive stock; nor any legislative function, though they may be advised with by the legislative councils. The entire legislature can perform no judiciary act, though by the joint act of two of its branches the judges may be removed from their offices, and though one of its branches is possessed of the judicial power in the last resort. The entire legislature, again, can exercise no executive prerogative, though one of its branches constitutes the supreme executive magistracy, and another, on the impeachment of a third, can try and condemn all the subordinate officers in the executive department. The reasons on which Montesquieu grounds his maxim are a further demonstration of his meaning. “When the legislative and executive powers are united in the same person or body,” says he, “there can be no liberty, because apprehensions may arise lest THE SAME monarch or senate should ENACT tyrannical laws to EXECUTE them in a tyrannical manner.” Again: “Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for THE JUDGE would then be THE LEGISLATOR. Were it joined to the executive power, THE JUDGE might behave with all the violence of
AN OPPRESSOR. “Some of these reasons are more fully explained in other passages; but briefly stated as they are here, they sufficiently establish the meaning which we have put on this celebrated maxim of this celebrated author.

If we look into the constitutions of the several States, we find that, notwithstanding the emphatical and, in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. New Hampshire, whose constitution was the last formed, seems to have been fully aware of the impossibility and inexpediency of avoiding any mixture whatever of these departments, and has qualified the doctrine by declaring “that the legislative, executive, and judiciary powers ought to be kept as separate from, and independent of, each other AS THE NATURE OF A FREE GOVERNMENT WILL ADMIT; OR AS IS CONSISTENT WITH THAT CHAIN OF CONNECTION THAT BINDS THE WHOLE FABRIC OF THE CONSTITUTION IN ONE INDISSOLUBLE BOND OF UNITY AND AMITY. “ Her constitution accordingly mixes these departments in several respects. The Senate, which is a branch of the legislative department, is also a judicial tribunal for the trial of impeachments. The President, who is the head of the executive department, is the presiding member also of the Senate; and, besides an equal vote in all cases, has a casting vote in case of a tie. The executive head is himself eventually elective every year by the legislative department, and his council is every year chosen by and from the members of the same department. Several of the officers of state are also appointed by the legislature. And the members of the judiciary department are appointed by the executive department. The constitution of Massachusetts has observed a sufficient though less pointed caution, in expressing this fundamental article of liberty. It declares “that the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them. “ This declaration corresponds precisely with the doctrine of Montesquieu, as it has been explained, and is not in a single point violated by the plan of the convention. It goes no farther than to prohibit any one of the entire departments from exercising the powers of another department. In the very Constitution to which it is prefixed, a partial mixture of powers has been admitted. The executive magistrate has a qualified negative on the legislative body, and the Senate, which is a part of the legislature, is a court of impeachment for members both of the executive and judiciary departments. The members of the judiciary department, again, are appointable by the executive department, and removable by the same authority on the address of the two legislative branches. Lastly, a number of the officers of government are annually appointed by the legislative department.

As the appointment to offices, particularly executive offices, is in its nature an executive function, the compilers of the Constitution have, in this last point at least, violated the rule established by themselves. I pass over the constitutions of Rhode Island and Connecticut, because they were formed prior to the Revolution, and even before the principle under examination had become an object of political attention. The constitution of New York contains no declaration on this subject; but appears very clearly to have been framed with an eye to the danger of improperly blending the
different departments. It gives, nevertheless, to
the executive magistrate, a partial control over
the legislative department; and, what is more,
gives a like control to the judiciary department;
and even blends the executive and judiciary
departments in the exercise of this control.
In its council of appointment members of the
legislative are associated with the executive
authority, in the appointment of officers, both
executive and judiciary. And its court for the trial
of impeachments and correction of errors is to
consist of one branch of the legislature and the
principal members of the judiciary department.

The constitution of New Jersey has blended the
different powers of government more than any of
the preceding. The governor, who is the executive
magistrate, is appointed by the legislature; is
chancellor and ordinary, or surrogate of the
State; is a member of the Supreme Court of
Appeals, and president, with a casting vote,
of one of the legislative branches. The same
legislative branch acts again as executive council
of the governor, and with him constitutes the
Court of Appeals. The members of the judiciary
department are appointed by the legislative
department and removable by one branch of it,
on the impeachment of the other. According to
the constitution of Pennsylvania, the president,
who is the head of the executive department, is
annually elected by a vote in which the legislative
department predominate. In conjunction with
an executive council, he appoints the members
of the judiciary department, and forms a
court of impeachment for trial of all officers,
judiciary as well as executive. The judges of the
Supreme Court and justices of the peace seem
also to be removable by the legislature; and the
executive power of pardoning in certain cases,
to be referred to the same department. The
members of the executive council are made EX-
OFFICIO justices of peace throughout the State.
In Delaware, the chief executive magistrate is
annually elected by the legislative department.
The speakers of the two legislative branches are
vice-presidents in the executive department. The
executive chief, with six others, appointed, three
by each of the legislative branches constitutes the
Supreme Court of Appeals; he is joined with the
legislative department in the appointment of the
other judges. Throughout the States, it appears
that the members of the legislature may at the
same time be justices of the peace; in this State,
the members of one branch of it are EX-OFFICIO
justices of the peace; as are also the members of
the executive council. The principal officers of
the executive department are appointed by the
legislative; and one branch of the latter forms
a court of impeachments. All officers may be
removed on address of the legislature.

Maryland has adopted the maxim in the most
unqualified terms; declaring that the legislative,
executive, and judicial powers of government
ought to be forever separate and distinct from
each other. Her constitution, notwithstanding,
makes the executive magistrate appointable by
the legislative department; and the members of
the judiciary by the executive department. The
language of Virginia is still more pointed on
this subject. Her constitution declares, “that the
legislative, executive, and judiciary departments
shall be separate and distinct; so that neither
exercise the powers properly belonging to the
other; nor shall any person exercise the powers
of more than one of them at the same time,
except that the justices of county courts shall be
eligible to either House of Assembly.” Yet we
find not only this express exception, with respect
to the members of the inferior courts, but that
the chief magistrate, with his executive council,
are appointable by the legislature; that two
members of the latter are triennially displaced at
the pleasure of the legislature; and that all the
principal offices, both executive and judiciary,
are filled by the same department. The executive
prerogative of pardon, also, is in one case vested
in the legislative department.

The constitution of North Carolina, which
declares “that the legislative, executive, and
supreme judicial powers of government ought
to be forever separate and distinct from each
other,’’ refers, at the same time, to the legislative
department, the appointment not only of the
executive chief, but all the principal officers
within both that and the judiciary department.
In South Carolina, the constitution makes the
executive magistracy eligible by the legislative
department. It gives to the latter, also, the
appointment of the members of the judiciary
department, including even justices of the
peace and sheriffs; and the appointment of
officers in the executive department, down to
captains in the army and navy of the State.
In the constitution of Georgia, where it is
declared “that the legislative, executive, and
judiciary departments shall be separate and
distinct, so that neither exercise the powers
properly belonging to the other,’’ we find
that the executive department is to be filled
by appointments of the legislature; and the
executive prerogative of pardon to be finally
exercised by the same authority. Even justices of
the peace are to be appointed by the legislature.
In citing these cases, in which the legislative,
executive, and judiciary departments have
not been kept totally separate and distinct, I
wish not to be regarded as an advocate for the
particular organizations of the several State
governments. I am fully aware that among the
many excellent principles which they exemplify,
they carry strong marks of the haste, and still
stronger of the inexperience, under which they
were framed. It is but too obvious that in some
instances the fundamental principle under
consideration has been violated by too great a
mixture, and even an actual consolidation, of the
different powers; and that in no instance has a
competent provision been made for maintaining
in practice the separation delineated on paper.
What I have wished to evince is, that the charge
brought against the proposed Constitution, of
violating the sacred maxim of free government, is
warranted neither by the real meaning annexed
to that maxim by its author, nor by the sense
in which it has hitherto been understood in
America. This interesting subject will be resumed
in the ensuing paper.

PUBLIUS.
Handout C: Montesquieu and Madison Venn Diagram
Before you watch:

1. What do you think of when you hear the term “separation of powers?” Write down some key words and phrases associated with it.

2. When some complain that it is difficult for Congress to get anything done, or you hear terms like “government gridlock,” what comes to mind?

While you watch:

1. The three branches of government are _______________, which makes the law, _______________, which carries out the law, and _______________, which interprets the law.

2. The Founders believed that for these powers to be concentrated in one person or branch, would be “the very definition of ______________.”

3. Article I of the U.S. Constitution explains the powers and function of _______________.

4. Article II of the U.S. Constitution explains the powers and function of _______________.

5. Article III of the U.S. Constitution explains the powers and function of _______________.

6. In Federalist No. 51, James Madison wrote about the need to enable government to control the governed, as well as for government to control _______________.

7. The Constitution ensures that _______________ is the most powerful branch of government.
After you watch:

1. What does the principle of separation of powers mean?

2. The video begins with Professor Munoz’s statement that the purpose of separation of powers is to “frustrate” government action. How would you put this in your own words?

3. Why would the Founders have wanted to frustrate government action? Are those reasons still important today?

4. How is James Madison’s plan for “ambition to counteract ambition” reflected in our system of separated powers?

5. What does our system of separated powers with checks and balances reveal about the Founders’ understanding of human nature?
Before you watch:

1. What do you think of when you hear the term “democracy?” Write down some key words and phrases.

2. Have you heard the phrase “majority rules”? Should the majority always rule? Why or why not?

After you watch:

1. What does the principle of republican government (or representative government) mean?

2. What was the chief reason that the Founders were wary of democracy?
3. Do you agree with those reasons? Why or why not?

4. How did James Madison challenge traditional thinking about republics?

5. “Democracy alone is not enough to protect everyone’s rights. Something more is needed.” What would you say is that “something more”? Explain.

6. Do any of the key words and phrases you wrote down for #1 in the “Before you watch” section still apply to a republican system?
Handout B: *Federalist No. 51* by James Madison

To the People of the State of New York:

TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal. But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of
government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State. But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified.

An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department? If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion to the several State constitutions, and to the federal Constitution it will be found that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view. First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is submitted to the administration of two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security
arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself. Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.

There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.

In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States oppressive combinations of a majority will be facilitated: the best security, under the republican forms, for the rights of every class of citizens, will be diminished: and consequently the stability and independence of some member of the government, the only other security, must be proportionately increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful.

It can be little doubted that if the State of Rhode Island was separated from the Confederacy and left to itself, the insecurity of rights under the popular form of government within such narrow limits would be displayed by such reiterated oppressions of factious majorities that some power altogether independent of the people would soon be called for by the voice of the very
factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; whilst there being thus less danger to a minor from the will of a major party, there must be less pretext, also, to provide for the security of the former, by introducing into the government a will not dependent on the latter, or, in other words, a will independent of the society itself. It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government. And happily for the REPUBLICAN CAUSE, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the FEDERAL PRINCIPLE.

PUBLIUS.
Handout A: Rights of the Accused Essay

All governments—whether a constitutional democracy, a monarchy, or a dictatorship—operate through the exercise of coercion. The fundamental question is, by what authority or criteria may government exercise that coercion? When we say in the United States that we have a government of law and not of men, we mean that government may exercise coercion only in terms of principle, embodied in the law, rather than according to the arbitrary whims of government officials. Under the rule of law coercion exists in two forms. First, law coerces us by prohibiting us from doing what we want to do (e.g., speeding), and requiring us to do what we do not want to do (e.g., pay taxes). Second, law coerces us by charging, convicting, and punishing us for not obeying either dimension of law in its first form.

Criminal law and procedures have to do with that second sense of the coercive power of law. In a society whose Founding document speaks of life, liberty, and the pursuit of happiness, the question of when and how government may legitimately employ its coercive power—in the words of the Fifth and Fourteenth Amendments, to deprive us of our life, liberty, and property—is thus central. Given the presumption of innocence that is implicit in our constitutional scheme, the rights of criminal suspects and defendants flow from and give effect to that presumption and the rule of law itself. For that reason, it is appropriate to think of these protections not as criminal rights, but rather as the rights of criminal suspects and defendants. Under our system of government people charged with criminal activity are not criminals in the eyes of the law until after they confess or are convicted in a trial. In simplest terms, we can say that the criminal-justice process consists of three stages: first, when police suspect someone of criminal activity, he is a criminal suspect; second, when police amass sufficient evidence for a prosecutor to charge someone with a crime, he is a criminal defendant; and third, once someone has confessed or has been found guilty in a trial, he is a criminal.

Broadly conceived, the Fourth Amendment covers the criminal suspect, the Fifth, Sixth, and Seventh Amendments cover the criminal defendant; and the Eighth Amendment (aside from bail) covers the criminal’s punishment.

Some people argue that the rights of the accused are mere technicalities, but one could argue that it is those very “technicalities”—especially the protection against unreasonable searches and seizures in the Fourth Amendment, at issue in Mapp v. Ohio (1961), the privilege against self-incrimination (as well as the guarantee of due process) in the Fifth Amendment, at issue in Miranda v. Arizona (1966), and the right to counsel in the Sixth Amendment, at issue in Gideon v. Wainwright (1963)—that distinguish a constitutional democracy from an authoritarian, tyrannical, or totalitarian political system. You may be familiar with a phrase out of the old American West: “Give him a fair trial and then hang him.” Sometimes used today as well, this phrase suggests that we know someone’s guilt prior to a trial, but under the law it is only through an elaborate set of procedures that we are authorized to determine one’s guilt or innocence. Under the presumption of innocence,
the rights of the accused are the foundation of those procedures.

Understanding the rights of the accused requires us to consider four central issues. The first one is what we can call the interpretive question: what is the meaning of a particular right or procedural guarantee? For example, what is a search, what is a seizure, and what is the difference between a reasonable and unreasonable search and seizure? Is the government engaged in a reasonable search when it wiretaps telephone conversations (*Katz v. United States*, 1967), or when it points a thermal-imaging device at someone’s home to determine whether he is generating enough heat inside to indicate that he is using heat lamps to grow marijuana (*Kyllo v. United States*, 2001)?

If police officers see a suspect swallow a substance during a drug bust and they take him to hospital to have his stomach pumped to obtain that substance as possible evidence of a crime, is that a reasonable search and seizure or a violation of the privilege against self-incrimination (*Rochin v. California*, 1952)? How much time must pass before one is deprived of the right to a speedy trial? Does allowing a child to testify behind a screen against an alleged child molester deny the defendant his right to confront the witnesses against him? These and other interpretive questions arise constantly when criminal suspects and defendants assert their constitutional rights.

Additionally, in answering the interpretive question we have to ask whether the meaning of a particular right or procedural guarantee can change over time. When we ask what “cruel and unusual punishment” is, for example, do we ask what those who wrote and ratified that prohibition in 1791 meant by it, or what we might consider it to mean today? Posing a hypothetical situation in which “some state should enact a new law providing public lashing, or branding of the right hand, as punishment for certain criminal offenses,” Justice Antonin Scalia, who as an originalist takes the former position, has written, “Even if it could be demonstrated unequivocally that these were not cruel and unusual measures in 1791 … I doubt whether any federal judge—even among the many who consider themselves originalists—would sustain them against an eighth amendment challenge” (“Originalism: The Lesser Evil,” *57 University of Cincinnati Law Review* 849, 861 [1989]). Relatedly, how do the criminal procedure guarantees ratified in 1791 apply to technological innovations unknown at the time, such as telephones, computers, automobiles, and airplanes?

The second central issue is what we can call the federalism issue: to what extent are federal criminal procedure guarantees applicable against the states? In other words, to what extent are states, where we find the vast bulk of criminal law, free to deal with criminal justice matters as they see fit, and to what extent are they bound by a federally mandated floor of criminal procedures? For example, the exclusionary rule at issue in *Mapp v. Ohio* requires that evidence obtained by the government in violation of the rights of the accused be excluded from use by the prosecution at trial. The Supreme Court first announced this rule as binding on the federal government in *Weeks v. United States* (1914). The Court held in *Wolf v. Colorado* (1949) that it was binding only on the federal government, and not the states. Do all rights of the accused in federal proceedings apply against the states, or only some of them—and how do we determine which do and which do not?
The exclusionary rule exemplifies the third central issue in understanding the rights of the accused: what is the constitutional status of rules the Supreme Court fashions to give meaning and effect to the procedural rights and guarantees stated explicitly in the Fourth through Eighth Amendments? It is one thing to state that criminal suspects and defendants are protected against unreasonable searches and seizures, have a right to counsel and due process, a protection against self-incrimination and cruel and unusual punishment, and so forth, but how are such rights and guarantees to be enforced?

Justice Benjamin Cardozo complained that the meaning of the exclusionary rule is that “the criminal is to go free because the constable has blundered” (*People v. Defore*, 1926). Standard arguments against such rules are, first, that they are not constitutional provisions; second, that they handicap the police, making investigation of crimes more difficult; and, third, that they let guilty people go. Standard arguments in favor of such rules are, first, that they are rules fashioned by the courts to give meaning, content, and effect to explicitly stated constitutional protections, protections that would not exist in any meaningful way otherwise. Second, that far from handicapping police, requiring adherence to the Miranda warning and the exclusionary rule actually makes the police more careful and thus more likely to sustain a case and secure a conviction. Third, that there is evidence that relatively few convictions are ever overturned on these “technical” grounds.

Finally, understanding the rights of the accused raises a fourth central issue, one with particular salience in our post-9/11 world: to what extent, if any, do those rights—especially the prohibition on unreasonable searches and seizures and the privilege against self incrimination—apply, for example, in the case of suspected terrorists who may have knowledge of a conspiracy to detonate a nuclear explosion in an American city? Even in a constitutional democracy dedicated to liberty, the rule of law, and the presumption of innocence, we have to remember that the central function of government is to provide for the national defense and the maintenance of law and order. There is always a tension between liberty and security: too much concern for liberty can threaten our personal and national security, and too much concern for our personal and national security can threaten our liberty. How do we strike the proper balance between liberty and security in ordinary cases of domestic criminal activity, and how do we do so in extraordinary cases of domestic and international terrorism?

As you read the following materials on the rights of the accused, consider how you would balance your liberty against your need for protection against both criminals and terrorists.

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Handout B: Due Process Amendments

**Amendment IV** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Amendment V** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall any person be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Amendment VI** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**Amendment VII** In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

**Amendment VIII** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Amendment XIV** Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Case Background**

The Fourth Amendment protects individuals from unreasonable searches and seizures and requires two branches of government to agree in order for search warrants to be issued. But what happens when the police do not act within the law, and conduct searches without a warrant? The Fourth Amendment does not specify.

In a series of cases, the Court was asked to consider whether criminal defendants’ convictions could stand if illegally seized evidence was used against them in court. In the 1914 case of *Weeks v. United States*, the Supreme Court answered no. With this ruling, the Court established the exclusionary rule for federal cases: evidence seized in violation of the Constitution may not be used at trial. Among the early critics of the exclusionary rule was Appeals Court Judge Benjamin Cardozo. Cardozo famously objected in 1926, “The criminal is to go free because the constable has blundered.”

About thirty-five years later in 1949, the Court declined to apply the exclusionary rule to the states through the Fourteenth Amendment’s Due Process Clause, reasoning that states could use other methods of ensuring due process of law.

When *Mapp v. Ohio* reached the Court in 1961, it was not initially seen as a Fourth Amendment case. Dollree Mapp was convicted under Ohio law for possessing “lewd, lascivious, or obscene material.” Mapp appealed her conviction. She based her claim on First Amendment grounds, saying that she had a right to possess the materials. When the case reached the Supreme Court, however, the Justices did not address her First Amendment claim. The Court instead overturned her conviction because the evidence against her had been seized without a warrant. In so ruling, the Court applied the exclusionary rule to the states. The exclusionary rule remains controversial. Supporters say it ensures liberty and justice, while critics claim it actually threatens those values.


Since the Fourth Amendment’s right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth [Amendment], it is enforceable against them by the same sanction of exclusion as is used against the Federal Government... in extending the substantive protections of due process to all constitutionally unreasonable searches—state or federal—it was logically and constitutionally necessary that the exclusion doctrine—an essential part of the right to privacy—be also insisted upon as an essential ingredient of the right...

[O]ur holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense.
There are those who say... that under our constitutional exclusionary doctrine “[t]he criminal is to go free because the constable has blundered.” ...[And] in some cases this will undoubtedly be the result. But... there is another consideration— the imperative of judicial integrity... The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.

Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice.

Dissenting Opinion, Mapp v. Ohio (1961)

In this posture of things, I think it fair to say that five members of this Court have simply “reached out” to overrule Wolf... It seems to me that justice might well have been done in this case without overturning a decision on which the administration of criminal law in many of the States has long justifiably relied... I would not impose upon the States this federal exclusionary remedy... Our concern here is not with the desirability of that [exclusionary] rule but only with the question whether the States are Constitutionally free to follow it or not as they themselves determine...
Handout D: Gideon v. Wainwright (1963)

Case Background

At the time the Constitution was adopted, British courts denied lawyers to individuals charged with treason or felonies. People accused of criminal misdemeanors, however, were provided lawyers. The American colonies and, later, the states, rejected this practice. Most of the original thirteen states allowed defendants in all cases to have lawyers. Through the years, the Supreme Court has heard several cases involving the question of whether poor criminal defendants had a right to a lawyer at public expense, or whether the Sixth Amendment merely meant that the government could not stop accused persons from hiring one.

In 1961, Clarence Earl Gideon was arrested in Florida for breaking into a Panama City pool hall with the intent to steal money from the vending machines. This was a felony. When Gideon appeared in court, his request for a court-appointed lawyer was denied, as Florida law only required lawyers for defendants charged with capital offenses. Gideon defended himself at trial. He was found guilty, and sentenced to five years in prison.

While in prison, Gideon made frequent use of the prison library. With the knowledge he gained there, along with the help of a fellow inmate with a legal background, he submitted a hand-written petition to the Supreme Court. In his petition, he challenged the constitutionality of his conviction, as he had not been able to have the assistance of counsel for his defense.

Unanimous Majority Opinion, Gideon v. Wainwright (1963)

Since 1942, when Betts v. Brady... was decided by a divided Court, the problem of a defendant’s federal constitutional right to counsel has been a continuing source of controversy and litigation in both state and federal courts...

We accept Betts v. Brady's assumption, based as it was on our prior cases, that a provision of the Bill of Rights, which is “fundamental and essential to a fair trial” is made obligatory upon the States by the Fourteenth Amendment. We think the Court in Betts was wrong, however, in concluding that the Sixth Amendment’s guarantee of counsel is not one of these fundamental rights.

Reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments... spend vast sums of money to... try defendants accused of crimes... Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries.
The Court in Betts v. Brady departed from the sound wisdom upon which the Court's holding in Powell v. Alabama rested. Florida, supported by two other States, has asked that Betts v. Brady be left intact. Twenty-two states, as friends of the Court, argue that Betts was “an anachronism when handed down” and that it should now be overruled. We agree.
Case Background

Ernesto Miranda was accused of kidnapping and rape. The victim identified Miranda in a line-up. Miranda also identified her as the victim at the police station. He was taken to an interrogation room for two hours. He did not request a lawyer, and was not informed that he had the right to have an attorney present.

After two hours of questioning, Miranda orally confessed to the crime, as well as signed a written confession. The confession included the acknowledgement: “I do hereby swear that I make this statement voluntarily and of my own free will with no threats, coercion or promises of immunity and with full knowledge of my legal rights understanding any statement I make may be used against me.”

Miranda was convicted of kidnapping and rape and sentenced to two twenty to thirty-year terms. He challenged the constitutionality of his conviction because he had not been advised of his rights to remain silent and have a lawyer present during questioning. His case eventually went to the Supreme Court. The Court had to consider whether confessions or other incriminating statements could be used by prosecutors at trial if police had not informed the accused person of their Fifth and Sixth Amendment rights.


It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity...

An individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion to speak...

[T]here can be no doubt that the Fifth Amendment privilege is available outside of criminal court proceedings and serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves.

We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored.
The Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given...

In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence... Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today.


An accused, arrested on probable cause, may blurt out a confession which will be admissible. ... Yet, under the Court’s rule, if the police ask him a single question... his response, if there is one, has somehow been compelled, even if the accused has been clearly warned of his right to remain silent. Common sense informs us to the contrary.

If the defendant may not answer without a warning a question such as “Where were you last night?” without having his answer be a compelled one, how can the Court ever accept his negative answer to the question of whether he wants to consult his retained counsel or counsel whom the court will appoint? And why, if counsel is present and the accused nevertheless confesses, or counsel tells the accused to tell the truth and that is what the accused does, is the situation any less coercive insofar as the accused is concerned?

All of this makes very little sense in terms of the compulsion which the Fifth Amendment proscribes...

**Case Background**

While the Court has long held that students “do not shed their constitutional rights ... at the schoolhouse gate,” it has also emphasized that students in public school have less of an expectation of privacy than adults. Therefore, what would be considered an unreasonable search if performed by a police officer on an adult, may or may not be considered unreasonable if performed by a public school official on a student.

In *New Jersey v. T.L.O.* (1985), the Court held that because of the special needs of the school environment, public school officials were not subject to the Fourth Amendment’s warrant requirement. They were, however, bound by the amendment’s requirement that searches be “reasonable.”

In *Skinner v. Railway Labor Executives Association* (1989), the Court held that drug tests were “searches” subject to Fourth Amendment considerations. The Court was asked to consider the constitutionality of random drug-testing of student athletes in *Vernonia School District v. Acton* (1995). Citing the diminished expectation of privacy of student athletes, along with the danger of serious injuries when competitors were on drugs, the Court upheld the policy as reasonable.

When the Board of Education of Pottawatomie instituted a policy requiring random drug tests of all students involved in any extra-curricular activity, Lindsay Earls and two other students challenged the policy as unconstitutional.

**Majority Opinion (5-4), Board of Education of Pottawatomie v. Earls (2002)**

Searches by public school officials, such as the collection of urine samples, implicate Fourth Amendment interests. We must therefore review the School District’s Policy for “reasonableness,” which is the touchstone of the constitutionality of a governmental search...

While schoolchildren do not shed their constitutional rights when they enter the schoolhouse... Fourth Amendment rights... are different in public schools than elsewhere; the ‘reasonableness’ inquiry cannot disregard the schools’ custodial and tutelary responsibility for children.

Applying the principles of Vernonia to the somewhat different facts of this case, we conclude that [Pottawatomie’s] Policy is also constitutional...

A student’s privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety. ...Securing order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults...
Students who participate in competitive extracurricular activities voluntarily subject themselves to many of the same intrusions on their privacy as do athletes. Some of these clubs and activities require occasional off-campus travel and communal undress. All of them have their own rules and requirements for participating students that do not apply to the student body as a whole. This regulation of extracurricular activities further diminishes the expectation of privacy among schoolchildren...

Given the minimally intrusive nature of the [urine] sample collection and the limited uses to which the test results are put, we conclude that the invasion of students’ privacy is not significant...

The drug abuse problem among our Nation’s youth has hardly abated since Vernonia was decided in 1995. In fact, evidence suggests that it has only grown worse...

In upholding the constitutionality of the Policy, we express no opinion as to its wisdom. Rather, we hold only that [Pottawatomie's] Policy is a reasonable means of furthering the School District's important interest in preventing and deterring drug use among its schoolchildren.


Seven years ago, in *Vernonia School Dist. v. Acton*, (1995), this Court determined that a school district’s policy of randomly testing the urine of its student athletes for illicit drugs did not violate the Fourth Amendment. In so ruling, the Court emphasized that drug use “increase[d] the risk of sports-related injury” and that Vernonia’s athletes were the “leaders” of an aggressive local “drug culture” that had reached “epidemic proportions.”

Today, the Court relies upon Vernonia to permit a school district with a drug problem its superintendent repeatedly described as “not ... major,” to test the urine of an academic team member solely by reason of her participation in a nonathletic, competitive extracurricular activity—participation associated with neither special dangers from, nor particular predilections for, drug use...

The particular testing program upheld today is not reasonable, it is capricious, even perverse: Petitioners’ policy targets for testing a student population least likely to be at risk from illicit drugs and their damaging effects. I therefore dissent...
Handout G: Case Briefing Sheet

Name of the Case and Year: ____________________________________________________________

Facts of the Case:
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

What is the constitutional question that the Supreme Court must answer?
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

What constitutional principles are indicated in this case?
__________________________________________________________________________________

Summarize one side of the argument: ______________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

Summarize the other side of the argument: _________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

How would you decide the case? Why?
__________________________________________________________________________________
__________________________________________________________________________________
How did the Supreme Court decide the case? Why?

_______________________________________________________________________________________________________________
_______________________________________________________________________________________________________________

What are the main points raised in any dissenting opinions? (If there is not a dissenting opinion, why do you think the Court decided unanimously?)

_______________________________________________________________________________________________________________
_______________________________________________________________________________________________________________

What other Supreme Court cases are related to this case? How are they related?

_______________________________________________________________________________________________________________
_______________________________________________________________________________________________________________
_______________________________________________________________________________________________________________
_______________________________________________________________________________________________________________
Handout H: Case Summary Sheet

**Directions:** Summarize facts of each of the Supreme Court cases below.

**Mapp v. Ohio (1961)**

_______________________________________________________________________________________________________________

_______________________________________________________________________________________________________________

_______________________________________________________________________________________________________________

**Gideon v. Wainwright (1963)**

_______________________________________________________________________________________________________________

_______________________________________________________________________________________________________________

_______________________________________________________________________________________________________________

**Miranda v. Arizona (1966)**

_______________________________________________________________________________________________________________

_______________________________________________________________________________________________________________

_______________________________________________________________________________________________________________

**Board of Education of Pottawatomie v. Earls (2002)**

_______________________________________________________________________________________________________________

_______________________________________________________________________________________________________________

_______________________________________________________________________________________________________________
# Handout A: Executive Powers

<table>
<thead>
<tr>
<th>Constitutional Citation</th>
<th>Explanation of the Executive Power</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Article I, Section 7:</strong></td>
<td>...[I]f he approve he shall sign [a bill], but if not he shall return it...</td>
</tr>
<tr>
<td><strong>Article II, Section 1:</strong></td>
<td>The executive power shall be vested in a President of the United States of America...</td>
</tr>
<tr>
<td><strong>Article II, Section 1:</strong></td>
<td>He shall take the following oath or affirmation:—“I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.”</td>
</tr>
<tr>
<td><strong>Article II, Section 2:</strong></td>
<td>The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States...</td>
</tr>
<tr>
<td><strong>Article II, Section 2:</strong></td>
<td>[H]e may require the opinion, in writing, of the principle officer in each of the executive departments, upon any subject relating to the duties of their respective offices...</td>
</tr>
<tr>
<td><strong>Article II, Section 3:</strong></td>
<td>He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient...</td>
</tr>
<tr>
<td><strong>Article II, Section 3:</strong></td>
<td>[H]e shall take care that the laws be faithfully executed...</td>
</tr>
<tr>
<td><strong>Article II, Section 4:</strong></td>
<td>The President...shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.</td>
</tr>
<tr>
<td><strong>Article IV, Section 4:</strong></td>
<td>The United States ... shall protect each of [the states] against invasion; and on application of the legislature, or of the executive ... against domestic violence.</td>
</tr>
<tr>
<td><strong>Article VI, Section 2:</strong></td>
<td>This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every state shall be bound.</td>
</tr>
</tbody>
</table>
Handout B: How a Bill Becomes a Law

• A bill is a piece of legislation that a member of the House of Representatives or Senate wants to become law.

• A bill is proposed, or sponsored, by a member of the House of Representatives or Senate. The sponsor of the bill is not necessarily the author. Bills might be written by other members, staff members, interest groups, or others.

  ✓ The bill is given to the House clerk or put in the hopper in the House of Representatives. In the Senate, a Senator must seek recognition to introduce a new bill in the morning.

  ✓ In the House of Representatives, additional members may add their names to the bill to become “cosponsors.” In the Senate, bills can be jointly sponsored by more than one member.

• After the bill is proposed, the Speaker of the House or the presiding officer of the Senate will send the bill to the appropriate committee.

  ✓ The committee will add the bill to their calendar. If a bill is not discussed in committee, it is effectively “killed.”

  ✓ The committee will hold hearings on the proposed bill or the chairperson of the committee may assign the bill to a subcommittee.

  ✓ After the bill is discussed, the full committee will vote on it. If the vote passes, the committee will make revisions or edits to the bill. After the edits are made, the committee must vote to accept the changes.

    If major edits are made, the committee may decide to create a new bill which will start the process over from the beginning.

  ✓ The committee will then write reports about why they are in favor of or against the bill. In the House, the bill will usually go to the Rules Committee for approval. The bill is then sent back to the main chamber of the House or Senate.

• When the bill returns to the main chamber, it is placed on the calendar for debate.

  ✓ When the bill comes up for debate, the House must follow the rules put in place by the Rules Committee when discussing the bill.

  ✓ In the Senate, debate is unlimited. Senators can debate the bill for as long as they want. Sometimes Senators will use a filibuster in which they continue to talk for hours to keep the bill
from being passed. A filibuster can be limited by *cloture* or a three-fifths vote. Cloture limits the amount of time that a bill can be debated to thirty hours more.

- **After the debate, the bill is voted on.**
  - In the House, there must be a quorum vote first to make sure there are enough members present to conduct the vote.
  - If the bill passes, it is then sent to the other chamber for deliberation and voting again.
  - If the bill does not pass either chamber, it dies.
  - If there are two similar bills passed by both chambers, members will meet in a *Conference Committee* to attempt to come to an agreement about the bills. If the committee agrees, they will write a conference report that is sent to both chambers for approval.

- **If both chambers pass the bill, it is sent on to the President to sign.**
  - If the president signs the bill, it becomes law.
  - If the president *vetoes* (or rejects) the bill, it will be sent back to the chamber where it originated. Each chamber has to vote on the bill again and attain a two-thirds majority to *override* the veto.
  - The president does not sign the bill within 10 days when Congress is in session, the bill automatically becomes law.
  - If the president does not sign the bill within 10 days and Congress is not in session, the bill does not become law. This is called a *pocket veto*. 


Handout C: Moot Court Procedures for Teachers

Preparation:

• Encourage students to use the background knowledge they have developed. Attorneys and Justices of the U.S. Supreme Court apply a great deal of background and historical knowledge.

• Caution students that “gotcha” questions within the classroom context are not productive. “Justices” should not ask questions that, based on their background and class activities, would not be fair game.

• Decide whether students will be allowed to use online resources via their smartphones during the exercise—there are good arguments both for using and for not using them.

• Recommendation—do not allow “Justices” to interrupt the attorneys in the first time or two that you run moot courts. They can ask their questions at the end of each attorney’s oral arguments.

• Encourage teamwork among “attorneys” in their presentations. Each team should have a lead attorney, but others will help fill in as needed.

Divide class into 3 groups (a fourth group could be journalists):

• 9 Justices
• Advocates for petitioner
• Advocates for respondent

Procedure:

• Give time for planning: Justices decide what questions they want answered in oral arguments; advocates for each side plan their oral arguments.

• Allow equal time for presentation of each side, including interruptions from Justices (or not—your choice). In the U.S. Supreme Court, each side has 30 minutes, and the Justices interrupt continuously.

• Justices deliberate and announce decision. Deliberation is actually done in strict privacy in the U.S. Supreme Court conference, but you decide for your class.

• At the beginning of each session of the Supreme Court, the Marshal of the Court (Court Crier) announces:
  “Oyez! Oyez! Oyez! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!”

  The Chief Justice will begin the oral argument phase by saying, “Petitioner, you may begin.”

  The petitioner’s attorney says, “Mr. Chief Justice, and may it please the Court...”

Debrief:

Discuss both the content of the case (constitutional principle and its application) and the processes employed. Consider thinking and planning process, civil discourse process, and the application of these skills outside the classroom.
Handout D: Supreme Court Case Scenarios

Note: Each fictionalized case description is based on the actual Supreme Court case noted.

**SCENARIO 1**

*Lucas v. South Carolina Coast Council (1992)*

Mary saved for and bought a piece of land outside an Iowa town. She wanted to build a home on the land. Mary applied for a building permit and found out that the Iowa legislature recently passed a law preventing further construction on land designated as “protected wetlands.” Her land, it turns out, was designated as “protected wetlands,” and she was denied a building permit for any future building on the property.

**SCENARIO 2**

*Santa Fe Independent School District v. Doe (2000)*

The student body of Lakewood High School, a public school, took a vote. By a vast majority, they voted to conduct a student-led prayer over the public address system of their football stadium before the kick-off of each home game. They elected Paul, the student body president, to conduct the non-denominational prayer. Jane, an atheist, objected. She was neither required to participate, nor punished for refusing. Nonetheless, Jane believed the public prayer itself to be unconstitutional.

**SCENARIO 3**

*Atkins v. Virginia (2002)*

Benny has been found guilty of a heinous crime: attacking and killing his boss in a fit of rage. In the sentencing phase of his trial, Benny’s lawyers produced two psychologists who testified to the fact that Benny was, in fact, mentally retarded. Benny’s lawyers and psychologists argued that the jury should not be allowed to assign the death penalty as punishment for Benny’s crimes. It was quite probable, the psychologists testified, that Benny did not fully understand the outcome of his actions, and while this fact does not absolve him of punishment, he should not be put to death.

**SCENARIO 4**

*Wisconsin v. Yoder (1972)*

Kate and Jim were ardent followers of the Amish faith, and, following Amish doctrine, did not wish to enroll their children in school beyond the 8th grade. Their state legislature, however, had passed a law requiring all children to attend school until age 16. Such a law, Kate and Jim believed, violated the duties required of them as an Amish family, and they refused to comply with the law. The state prosecuted and punished Kate and Jim for violating the law and refusing to send their children to school.
Miranda v. Arizona (1966)

Darren was arrested on suspicion of kidnapping and rape. He was taken to the police station, where the victim picked Darren out of a lineup. An officer pointed to a woman in the police station and asked if she was the victim. Darren told them, “Yeah, that's her.” The police then took him to an interrogation room where he was questioned for two hours. He verbally confessed to the crime, and signed a written statement, prepared by the police, admitting his guilt. Darren's confession included a statement that he was aware of his rights, and that any statements he made could be used against him. However, the police made little effort throughout the interrogation to allow Darren access to a lawyer, or generally notify of him of his rights.

Sheppard v. Maxwell (1966)

Elaine, a respected physician in the community, was accused of murdering her husband, Adam. Elaine continually maintained her innocence in Adam’s death. The murder trial was a media sensation – reporters were in the courtroom, and were even assigned seats between the jurors and the defendant. The story was all over the local and state press for weeks. Editorials demanded a guilty verdict. The jury was not sequestered and had access to the media coverage. Elaine was found guilty. After her conviction, Elaine claimed that the extensive media coverage tainted her prosecution, and led to an unfair guilty verdict. She appealed her conviction, arguing that the media coverage biased the opinions of those in her community, and insisting that her guilty verdict should be overturned.


Sara, a public high school student, was caught smoking cigarettes in the school bathroom. The teacher who caught Sara took her to the principal’s office, where a school official questioned her about whether she was smoking in the bathroom. She denied it. The principal, not believing her story, decided to take further action by looking into Sara’s purse. He found a pack of cigarettes as well as a bag of rolling papers commonly associated with drug use. The official then decided to thoroughly search Sara’s purse. He discovered a bag of marijuana and various papers that seemed to indicate that Sara was dealing marijuana. He placed Sara on suspension and called the police.

Brandenburg v. Ohio (1969)

Matt was a prominent leader of the Ku Klux Klan. At a Klan rally, Matt advocated support for the Klan ideal of “white power.” He gave a speech full of racial epithets. He also said, in an apparent threat, “If our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it’s possible that there might have to be some revenge taken.” He was afterwards arrested for violating a state law that prohibited the advocacy of crime, sabotage, or violence as a means of accomplishing political reform. The law also prohibited the gathering of any society or group formed to teach or advocate such messages. Matt was fined $1,000 and sentenced to ten years in prison.
President Abraham Lincoln said in 1864, “It has long been a grave question whether any government, not too strong for the liberties of its people, can be strong enough to maintain its existence in great emergencies.” Leading the United States through civil war, Lincoln had to negotiate this eternal tension between liberty and order.

**Habeas Corpus and the Constitution**

One key safeguard for liberty is the privilege of habeas corpus. Habeas corpus is the power of a judge to demand the government show cause for putting someone in jail. In other words, habeas corpus is what prevents the government from arresting people who have not committed crimes and locking them up without having to answer to anyone. A writ of habeas corpus requires that the Executive Branch bring the arrested person to court—literally, the phrase is Latin for “you shall have the body to be subjected to examination” (habeas corpus ad subjiciendum). Habeas corpus has also been called “the Great Writ,” and has its roots in the Magna Carta of 1215. The Founders knew habeas corpus was not only a traditional privilege, but also an essential safeguard of freedom. The Constitution guarantees that “The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” This provision appears in Article I, Section 9, which lists limits on the powers of Congress.

**Habeas Corpus and the Civil War**

By the spring of 1861, South Carolina, Virginia, North Carolina, Tennessee, and the rest of the Confederacy had seceded from the Union. Maryland, which was also a slave state, seemed ready to join the Confederacy as well. If Maryland seceded, the US capital would have been surrounded by the Confederate States of America.

President Lincoln, believing that the existence of the United States was in danger, suspended writs of habeas corpus. The suspension only applied within Maryland and parts of Midwestern states. Congress was not in session. But Lincoln believed that his authority to suspend the writs came from his power as Commander in Chief of the military. Article II, section 2 of the Constitution states, “The President shall be commander in chief of the Army and Navy of the United States.”

Lincoln gave the following instructions to the Commanding General Army of the United States:

“You are engaged in repressing an insurrection against the laws of the United States. If at any point on or in the vicinity of the military line...you find resistance which renders it necessary to suspend the writ of habeas corpus for the public safety, you personally or through the officer in command at the point where resistance occurs are authorized to suspend that writ.”

John Merryman of Maryland was arrested for being “an active secessionist sympathizer.” He was also charged with communication with the Confederates and with treason. Merryman wanted to be removed from prison and charged in open civilian court.

The case, *ex parte Merryman* (1861), came before Supreme Court Justice Roger Taney, sitting as a circuit court judge. (The Supreme Court was
Taney’s strongly worded opinion asserted two things. First, only Congress, and not the President, had the power to suspend *habeas corpus*. Secondly, even if the privilege of the writ of *habeas corpus* had been suspended by act of Congress, only someone in the military could be held and tried by a military commission.

Taney asserted that the power to suspend *habeas corpus* was not given to the President, and could not be inferred from any of the President’s listed duties. Instead, the conditions for its suspension were listed in Article I, which deals with the powers of Congress. Taney quoted past Supreme Court Justices who had written that the power to suspend *habeas corpus* belonged to Congress. Taney believed that Lincoln was violating the Constitution’s provisions, guarantees, and checks and balances.

He wrote, “[I]f the authority which the Constitution has confided to the judiciary department and judicial officers [to judge the legality of imprisonments], may thus, upon any pretext or under any circumstances, be usurped by the military power, at its discretion, the people of the United States are no longer living under a government of laws...”

**President Lincoln’s Response**

President Lincoln disregarded Taney’s order and continued ordering suspensions in additional areas. He claimed that his oath to preserve, protect, and defend the Constitution required him to take these actions. Speaking before Congress on July 4, 1861, Lincoln asked ironically, “Are all the laws, but one, to go unexecuted, and the government itself go to pieces, lest that one be violated?”

On Sept. 24, 1862, Lincoln suspended *habeas corpus* throughout the nation. Anyone rebelling against the US would be jailed, denied a jury trial, and tried in military court instead. In March of 1863, two years after Lincoln’s first suspension order, Congress formally suspended *habeas corpus* with the passage of the *Habeas Corpus Act*. 
Handout B: A Proclamation

A Proclamation, September 24, 1862

Whereas, it has become necessary to call into service not only volunteers but also portions of the militia of the States by draft in order to suppress the insurrection existing in the United States, and disloyal persons are not adequately restrained by the ordinary processes of law from hindering this measure and from giving aid and comfort in various ways to the insurrection;

Now, therefore, be it ordered, first, that during the existing insurrection and as a necessary measure for suppressing the same, all Rebels and Insurgents, their aiders and abettors within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid and comfort to Rebels against the authority of United States, shall be subject to martial law and liable to trial and punishment by Courts Martial or Military Commission:

Second. That the Writ of Habeas Corpus is suspended in respect to all persons arrested, or who are now, or hereafter during the rebellion shall be, imprisoned in any fort, camp, arsenal, military prison, or other place of confinement by any military authority or by the sentence of any Court Martial or Military Commission.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty fourth day of September, in the year of our Lord one thousand eight hundred and sixty-two, and of the Independence of the United States the 87th.

ABRAHAM LINCOLN

1. Who wrote this document, and when was it written?

_______________________________________________________________________________________________________________
_______________________________________________________________________________________________________________

2. What two legal measures does this document announce?

_______________________________________________________________________________________________________________
_______________________________________________________________________________________________________________

3. What two reasons are given for the measures?

_______________________________________________________________________________________________________________
_______________________________________________________________________________________________________________
Handout C: Milligan and the Constitution

Directions: Read the scenario below. Even though Congress authorized the President to suspend habeas corpus with the passage of the Habeas Corpus Act in 1863, did the President have the power to hold Mr. Milligan and try him in a military court? Use the documents below, along with information from Handouts A and B, to prepare an argument for or against the President.

It is 1866. Mr. Milligan has been charged with conspiracy against the United States government; affording aid and comfort to rebels against authority of the U.S.; inciting insurrection; disloyal practices; and violation of the laws of war.

Mr. Milligan is a private citizen living in Indiana. He is not connected with military service, and had not been a resident of any of the states in the rebellion or a prisoner of war. He was not participating in hostile activities against the U.S. when he was captured.

Mr. Milligan has petitioned the Supreme Court for a writ of habeas corpus.

Sections of the United States Constitution (1787)

Article I, Section 8. The Congress shall have power to ... provide for the common defense and general welfare of the United States...

Article I, Section 9. ...The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Article II, Section 2. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states...

Article II, Section 3. [The President] shall take care that the laws be faithfully executed...

Amendment VI (1791). In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.
Handout D: Case Briefing Sheet

**Directions:** Use the chart below to help you prepare to try the case of Mr. Milligan.

**Who are you?**  
(*circle one*)
- Attorney for Mr. Milligan  
  (arguing NO)
- Attorney for the U.S.  
  (arguing YES)
- Supreme Court Justice  
  (deciding the case)

**Constitutional Question**

Even though Congress authorized the President to suspend *habeas corpus* with the passage of the *Habeas Corpus Act* in 1865, did the President have the power to hold Mr. Milligan and try him a military court?

<table>
<thead>
<tr>
<th>Document/Event</th>
<th>Does this support my case? Why or why not?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article I, Section 8 and 9</td>
<td></td>
</tr>
<tr>
<td>Article II, Section 2</td>
<td></td>
</tr>
<tr>
<td>Article II, Section 3</td>
<td></td>
</tr>
<tr>
<td>The Sixth Amendment</td>
<td></td>
</tr>
</tbody>
</table>

**Other information:**  
*e.g. history, precedent*
Handout E: The Ruling

In *ex parte Milligan* (1866), the Supreme Court ruled that the President could not create military tribunals to try citizens as long as civil courts were operational. Mr. Milligan had the right to be tried by a jury in a civil court.

The Court noted the government’s power to suspend *habeas corpus* in rebellion or invasion, but pointed out that the citizens’ Sixth Amendment right to trial by jury needed to be preserved.

The Court reasoned that the Founders knew that “trial by an established court, assisted by an impartial jury, was the only sure way of protecting the citizen against oppression and wrong. Knowing this, they limited the suspension to one great right [*habeas corpus*], and left the rest to remain forever inviolable.”

The ruling also defined conditions for martial law and asserted the civilian power over the military. “Martial law [military control of the justice system] cannot arise from a threatened invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration...Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war.”
Handout F: Civil Liberty Laws

The Sedition Act (1798)

Section 2. And be it further enacted, That if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering, or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either House of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either House of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States; or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the Constitution of the United States; or to resist, oppose, or defeat any such law or act; or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

The Alien Act (1798)

Section 1. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be lawful for the President of the United States, at any time during the continuance of this act, to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States within such time as shall be expressed in such order; which order shall be served on such alien, by delivering him a copy thereof, or leaving the same at his usual abode, and returned to the office of the Secretary of State, by the marshal, or other person, to whom the same shall be directed. And in case any alien, so ordered to depart, shall be found at large within the United States after the time limited in such order for his departure, and not having obtained a license from the President to reside therein, or having obtained such license, shall not have conformed thereto, every such alien shall, on conviction thereof, be imprisoned for a term not exceeding three years, and shall never after be admitted to become a citizen of the United States: Provided always, and be it further enacted, That if any alien so ordered to depart shall prove, to the satisfaction of the President, by evidence, to be taken before such person or persons as the President shall direct, who are for that purpose hereby authorized to administer oaths, that no injury or danger to the United States will arise from suffering such alien to reside therein, the President may grant a license to such alien to remain within the United States for such time as he shall judge proper, and at such place as he may designate. And the President may also
require of such alien to enter into a bond to the United States, in such penal sum as he may direct, with one or more sufficient sureties, to the satisfaction of the person authorized by the President to take the same, conditioned for the good behaviour of such alien during his residence in the United States, and not violating his license, which license the President may revoke whenever he shall think proper.

**The Espionage Act (1917)**

Section 3. Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished by a fine of not more than $10,000 or imprisonment for not more than twenty years, or both.

**Executive Order 9066 (1942)**

(Resulting in the Relocation of Japanese-Americans)

Whereas the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities...

Now, therefore, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this order. The designation of military areas in any region or locality shall supersede designations of prohibited and restricted areas by the Attorney General under the Proclamations of December 7 and 8, 1941, and shall supersede the responsibility and authority of the Attorney General under the said Proclamations in respect of such prohibited and restricted areas.
Handout G: The History of Civil Liberty Laws

<table>
<thead>
<tr>
<th>Policy Name</th>
<th>Historical Context</th>
<th>Civil Liberties Affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Sedition Act (1798)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Alien Act (1798)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Espionage Act (1917)</td>
<td></td>
<td></td>
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<tr>
<td>Executive Order 9066</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1942)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Handout A: Background Essay - What is a Federal Republic?

The Founders were always wary of government power. They wrote the Constitution to make a strong government, but to limit its authority. One way they did this was to create a federal republic. The national government was given specific powers, and others remained with the states or the people. These two separate powers – the national government and state governments – could co-exist because the national government was given only those powers specified in the Constitution. Among these were the powers to regulate commerce between states, to coin money, to raise armies, and to collect taxes. This type of political system is defined as federalism. The states have their laws, but they are also subject to the laws of the federal government. This separation gives the states greater autonomy to create laws based on the will of their citizenry.

Another way the principle of federalism was applied in the Constitution was in the structure of the U.S. Congress. The people would be represented in the House of Representatives. States would be equally represented in the Senate, with each state legislature selecting two Senators. In this manner, both the states and the people would have a say in federal laws.

The Federalist/Anti-Federalist Debate

The two major political groups at the time of the Founding were the Federalists and the Anti-Federalists. They disagreed about the new distribution of power. Many Anti-Federalists had been happy with the Articles of Confederation and feared that the new central government created by the Constitution would take over the states. They believed that the states should retain more power, and they argued that the new Constitution should not be ratified. They were especially alarmed by vague phrases in the listing of Congress’s powers, such as “necessary and proper,” and “general welfare.” They worried these words might be interpreted as broad grants of power to allow the federal government to interfere with the powers of the states and the liberties of the people. They also believed the people needed a bill of rights to protect themselves from the national government.

Federalists favored the Constitution as written. They supported a strong but constrained central government and weaker state governments. They believed that state powers and individuals’ rights were secure under the Constitution because the central government’s role was limited by the list of enumerated powers (Article I, Section 8), as well as by the list of denied powers (Article I, Section 9). The Constitution did not list powers of states because it was assumed the states kept all the powers given to them by their state constitutions except those given to the federal government and those powers denied to states in Article I, Section 10.

The Tenth Amendment

The Federalists eventually won the debate when the Constitution was ratified (approved) in 1789 by the required number of states, but calls for a bill of rights continued. In fact, eight states submitted lists of proposed amendments along
with their ratifications. The one amendment proposed by all was the principle now contained in the Tenth Amendment.

The Tenth Amendment states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” The Founders included the Tenth Amendment to support the constitutionally-limited nature of the federal government. It highlights the fact that the states and the people keep all powers not given by the Constitution to the federal government. If a power is not given to the federal government, it remains with the states or the people.

**Changes to Our Federal System**

The Seventeenth Amendment further changed the balance of federalism when it was added to the Constitution in 1913. The Seventeenth Amendment provided for the direct election of Senators to U.S. Congress by the people of each state. State governments would no longer be represented in one house of Congress. Supporters of this change believed it resulted in a more democratic society. Critics argued that the change resulted in more federal laws that infringed on the powers of states or that carried mandates with no funding attached.

The Fourteenth Amendment, ratified after the Civil War in 1868, dramatically altered the federal republic created by the Founders. By limiting the types of laws states could pass, the amendment struck a blow to state sovereignty. About sixty years after it was passed, the Supreme Court began using the Fourteenth Amendment to apply Bill of Rights limits to the states. Until the 1920s, the Bill of Rights only applied to the federal government. This expansion of the Fourteenth Amendment became the cornerstone for equal protection under federal law for all individuals in the states, too.

Legislation also altered the balance of power between the national government and the states. After the Civil War, a majority of states enacted Jim Crow laws requiring racial segregation. By September 1949, only fifteen U.S. states had no segregation laws. The U.S. armed forces and much of the federal government were also segregated. In response to state segregation laws, many argued for increased federal power. They pointed to the legal inequality and violation of natural rights caused by such laws. They claimed a strong federal government could correct such wrongs. They made the case that states often commit wrongful acts, and that the federal government is an important force to correct these wrongs. Others disagreed, pointing out that the federal government did nothing to protect citizens’ rights over decades of segregation. The 1954 Supreme Court case *Brown v. Board of Education* marked the beginning of the Civil Rights Movement toward equal treatment in public life and the end of the Jim Crow period. Later federal legislation intended to correct civil rights violations by states included the Civil Rights Act (1964) and the Voting Rights Act (1965). These laws and the enforcement of them came almost a century after the passage of the Fourteenth Amendment.

**The Debate over Federalism**

Debates over federalism often turn to other topics. Critics of federalism argue that a strong national government is needed to address unequal treatment by states. A patchwork of
laws across the country makes it difficult for individuals and families who travel or move. Supporters of federalism argue that state power allows the states to make policies that meet the needs of their citizens, or to adopt successful policies from other states. What is acceptable for the people in some states—casinos and gambling, for example—may not be welcome in others. Finally, some supporters of federalism ask: why would the people elected to federal offices do any better at protecting rights than people in states offices would? The answer to these questions, they say, is not to trust certain leaders more than others, but to hold all officials accountable to the requirements set by the Constitution.

The Founders believed, like many political philosophers, that the desire for power was a natural human tendency. This power could be used to do bad things as easily as it could be used to do good things. The American federal system was designed to prevent abuses of power and protect freedom. Neither a very strong federal system nor complete state independence has been shown to be perfect. Finding the right balance of power has been vital to liberty—as well as controversial—throughout our history.

Critical Thinking Questions

1. What is the principle of federalism?
2. What does the Tenth Amendment state?
3. How did the Fourteenth and Seventeenth Amendments alter the system of federalism originally established in the Constitution?
4. To what extent should the national government make laws concerning the controversial topics listed below? Use the following sources to frame your response: Article I, Section 8; Article I, Section 9; Article IV; Article VI; the Tenth Amendment; the Fourteenth Amendment.
   a. Health insurance
   b. Education standards
   c. Marriage and family law
   d. Medical marijuana
   e. Assisted suicide
“And here I would make this inquiry of those worthy characters who composed a part of the late federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated government, instead of a confederation. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen; but, sir, give me leave to demand, What right had they to say, We, the people? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, Who authorized them to speak the language of, We, the people, instead of, We, the states? States are the characteristics and the soul of a confederation. If the states be not the agents of this compact, it must be one great, consolidated, national government, of the people of all the states!”

—PATRICK HENRY, VIRGINIA RATIFYING CONVENTION, JUNE 4, 1788
Handout C: James Madison and Federalism - Excerpts from *Federalist No. 39*

**Directions:** Using three highlighter pens, read the following passages from Federalist No. 39 and discuss the questions below. Numbers in brackets show paragraph numbers from the complete essay, and all italics are Madison’s.

- Where Madison uses the term, “national,” think “We the People,” and highlight those aspects blue.
- Where he uses the term “federal,” think, “We the States,” and highlight those aspects yellow.
- Where he says we have both federal and national influences, highlight in green.

1. **Ratification of the Constitution [10]**
   “[R]atification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. ...The act, therefore, establishing the constitution, will not be a national, but a federal act.”

2. **The House of Representatives [12]**
   “[The House of Representatives] will derive its powers from the people of America; and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular state. So far the government is national, not federal.”

3. **The Senate [12]**
   “[The Senate] will derive its powers from the states, as political and co-equal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is federal, not national.”

4. **Government Power [14]**
   “The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government...[T]he proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects...”
5. Amending the Constitution [15]

“[On] the authority by which amendments are to be made, we find it neither wholly national nor wholly federal. Were it wholly national, the supreme and ultimate authority would reside in the majority of the people of the Union...Were it wholly federal on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all... In requiring more than a majority, and particularly in computing the proportion by States, not by citizens, it departs from the national and advances towards the federal character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the federal and partakes of the national character...”

6. Summary [16]

“The proposed Constitution ... [is] neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national.”

Comprehension Questions

1. According to Madison, did the Constitution provide for a nation of people or a nation of states—or both? Explain.

2. To what extent was Alexander Hamilton on target in this statement: “This balance between the National and State governments ought to be dwelt on with peculiar attention, as it is of the utmost importance. It forms a double security to the people. ...Indeed, they will both be prevented from overpassing their constitutional limits by a certain rivalship, which will ever subsist between them.”
Handout D: Federalism Venn Diagram

**Directions:** Use the spaces below to show what powers you think should belong to each level of government.
Handout E: Excerpts from *Federalist No. 26*

As often as the question comes forward, the public attention will be roused and attracted to the subject, by the party in opposition; and if the majority should be really disposed to exceed the proper limits, the community will be warned of the danger, and will have an opportunity of taking measures to guard against it. Independent of parties in the national legislature itself, as often as the period of discussion arrived, the State legislatures, who will always be not only vigilant but suspicious and jealous guardians of the rights of the citizens against encroachments from the federal government, will constantly have their attention awake to the conduct of the national rulers, and will be ready enough, if anything improper appears, to sound the alarm to the people, and not only to be the VOICE, but, if necessary, the ARM of their discontent.
An ordinance to nullify certain acts of the Congress of the United States, purporting to be laws laying duties and imposts on the importation of foreign commodities.

Whereas the Congress of the United States by various acts, purporting to be acts laying duties and imposts on foreign imports, but in reality intended for the protection of domestic manufactures and the giving of bounties to classes and individuals engaged in particular employments, at the expense and to the injury and oppression of other classes and individuals, and by wholly exempting from taxation certain foreign commodities, such as are not produced or manufactured in the United States, to afford a pretext for imposing higher and excessive duties on articles similar to those intended to be protected, hath exceeded its just powers under the constitution, which confers on it no authority to afford such protection, and hath violated the true meaning and intent of the constitution, which provides for equality in imposing the burdens of taxation upon the several States and portions of the confederacy: And whereas the said Congress, exceeding its just power to impose taxes and collect revenue for the purpose of effecting and accomplishing the specific objects and purposes which the constitution of the United States authorizes it to effect and accomplish, hath raised and collected unnecessary revenue for objects unauthorized by the constitution.

We, therefore, the people of the State of South Carolina, in convention assembled, do declare and ordain and it is hereby declared and ordained, that the several acts and parts of acts of the Congress of the United States, purporting to be laws for the imposing of duties and imposts on the importation of foreign commodities, and now having actual operation and effect within the United States, and, more especially, an act entitled “An act in alteration of the several acts imposing duties on imports,” approved on the nineteenth day of May, one thousand eight hundred and twenty-eight and also an act entitled “An act to alter and amend the several acts imposing duties on imports,” approved on the fourteenth day of July, one thousand eight hundred and thirty-two, are unauthorized by the constitution of the United States, and violate the true meaning and intent thereof and are null, void, and no law, nor binding upon this State, its officers or citizens; and all promises, contracts, and obligations, made or entered into, or to be made or entered into, with purpose to secure the duties imposed by said acts, and all judicial proceedings which shall be hereafter had in affirmation thereof, are and shall be held utterly null and void.

SOUTH CAROLINA ORDINANCE OF NULLIFICATION,
NOVEMBER 24, 1832
Handout G: Excerpts from President Jackson’s Proclamation

PRESIDENT JACKSON’S PROCLAMATION REGARDING NULLIFICATION, DECEMBER 10, 1832

Whereas a convention, assembled in the State of South Carolina, have passed an ordinance, by which they declare that the several acts and parts of acts of the Congress of the United States, purporting to be laws for the imposing of duties and imposts on the importation of foreign commodities, and now having actual operation and effect within the United States, and more especially “two acts for the same purposes, passed on the 29th of May, 1828, and on the 14th of July, 1832, are unauthorized by the Constitution of the United States, and violate the true meaning and intent thereof, and are null and void, and no law,” nor binding on the citizens of that State or its officers, and by the said ordinance it is further declared to be unlawful for any of the constituted authorities of the State, or of the United States, to enforce the payment of the duties imposed by the said acts within the same State, and that it is the duty of the legislature to pass such laws as may be necessary to give full effect to the said ordinances:

And whereas, by the said ordinance it is further ordained, that, in no case of law or equity, decided in the courts of said State, wherein shall be drawn in question the validity of the said ordinance, or of the acts of the legislature that may be passed to give it effect, or of the said laws of the United States, no appeal shall be allowed to the Supreme Court of the United States, nor shall any copy of the record be permitted or allowed for that purpose; and that any person attempting to take such appeal, shall be punished as for a contempt of court:

And, finally, the said ordinance declares that the people of South Carolina will maintain the said ordinance at every hazard, and that they will consider the passage of any act by Congress abolishing or closing the ports of the said State, or otherwise obstructing the free ingress or egress of vessels to and from the said ports, or any other act of the Federal Government to coerce the State, shut up her ports, destroy or harass her commerce, or to enforce the said acts otherwise than through the civil tribunals of the country, as inconsistent with the longer continuance of South Carolina in the Union; and that the people of the said State will thenceforth hold themselves absolved from all further obligation to maintain or preserve their political connection with the people of the other States, and will forthwith proceed to organize a separate government, and do all other acts and things which sovereign and independent States may of right do.
## Handout A: A Good Citizen

**Directions**: Drawing on your knowledge of the American Founding Documents, history, and citizenship, complete the following chart. An example is given in each column to help you get started.

<table>
<thead>
<tr>
<th>What a good citizen knows...</th>
<th>What a good citizen believes...</th>
<th>What a good citizen says or does...</th>
</tr>
</thead>
<tbody>
<tr>
<td>the rights guaranteed in the Bill of Rights</td>
<td>loyalty to his or her country</td>
<td>speaks up when someone's rights are being denied (including his or her own)</td>
</tr>
</tbody>
</table>
# Handout B: Citizen Slips

<table>
<thead>
<tr>
<th>Knows the names of elected representatives</th>
<th>Knows people depend on him or her to keep promises</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knows which government body makes laws</td>
<td>Follows through on commitments</td>
</tr>
<tr>
<td>Knows the main ideas of the Constitution</td>
<td>Believes compromise is valuable</td>
</tr>
<tr>
<td>Knows that liberty means responsibility</td>
<td>Believes all people deserve respect</td>
</tr>
<tr>
<td>Knows that people can take care of themselves</td>
<td>Believes people can organize to bring about results</td>
</tr>
<tr>
<td>Knows how a law is made</td>
<td>Believes voting is a responsibility</td>
</tr>
<tr>
<td>Knows the legal voting age</td>
<td>Believes people are generally trustworthy</td>
</tr>
<tr>
<td>Knows the responsibilities of elected officials</td>
<td>Believes that individuals can solve problems</td>
</tr>
<tr>
<td>Knows who the American Founders were</td>
<td>Respects the views of others</td>
</tr>
<tr>
<td>Knows contributions of American heroes</td>
<td>Obeys just laws</td>
</tr>
<tr>
<td>Knows major wars and battles in history</td>
<td>Gives to charity</td>
</tr>
<tr>
<td>Knows the Declaration of Independence</td>
<td>Listens to others</td>
</tr>
<tr>
<td>Knows problems facing the country today</td>
<td>Weighs pros and cons</td>
</tr>
<tr>
<td>Knows good things about America</td>
<td>Considers the impact of his or her actions on others</td>
</tr>
<tr>
<td>Knows that all people are equal</td>
<td>Believes our diverse society is united by common ideals</td>
</tr>
<tr>
<td>Knows freedom is protected in America</td>
<td>Works to change unjust laws</td>
</tr>
<tr>
<td>Handout A: Page 2</td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td></td>
</tr>
<tr>
<td>Disagrees with others respectfully</td>
<td>Considers the sources of news reports</td>
</tr>
<tr>
<td>Stays informed about public affairs</td>
<td>Reads news articles on the Internet</td>
</tr>
<tr>
<td>Acts considerately towards others</td>
<td>Keeps promises</td>
</tr>
<tr>
<td>Helps victims of injustice</td>
<td>Pays taxes</td>
</tr>
<tr>
<td>Persuades others using reasonable arguments</td>
<td>Serves on a jury</td>
</tr>
<tr>
<td>Speaks at community meetings</td>
<td>Demonstrates in support of positions</td>
</tr>
<tr>
<td>Serves as an elected official</td>
<td>Writes letters to the editor</td>
</tr>
<tr>
<td>Starts a business</td>
<td>Knows when government needs to be checked</td>
</tr>
<tr>
<td>Volunteers for charity</td>
<td>Expresses opinions on radio talk shows</td>
</tr>
<tr>
<td>Participates in neighborhood watches</td>
<td>Reports suspicions of crimes</td>
</tr>
<tr>
<td>Runs for political office</td>
<td>Serves in the military</td>
</tr>
<tr>
<td>Displays campaign buttons or signs</td>
<td>Shops at local businesses</td>
</tr>
<tr>
<td>Contributes to political campaigns</td>
<td>Invests in business</td>
</tr>
<tr>
<td>Communicates views to public officials</td>
<td>Pays bills on time</td>
</tr>
<tr>
<td>Participates in organized groups</td>
<td>Takes care of his or her home</td>
</tr>
<tr>
<td>Watches TV news programs</td>
<td>Provides for family</td>
</tr>
<tr>
<td>Reads the newspaper</td>
<td>Casts informed votes</td>
</tr>
<tr>
<td>Listens to news on the radio</td>
<td></td>
</tr>
</tbody>
</table>

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Handout A: Excerpts from *The Republic of Plato* (~380 B.C.) and selected Federalist Papers by James Madison (1787-1788)

**Background:** The Republic was a conversation among Socrates, Glaucon, Cephalus, Polemarchus, Thrasymachus, and Adeimantus, written by Plato. The Federalist Papers were written by James Madison, Alexander Hamilton, and John Jay, all using the pen name, Publius, in order to build support for the U.S. Constitution during the ratification debate in New York.

**Directions:** Read the excerpts below and answer the questions that follow. *(Note: Clarifying information on each excerpt can be found in the margins.)*

**Excerpts from *The Republic of Plato***

**Book IV: 415 a-c**

“It was indeed appropriate,” I [Socrates] said. “All the same, hear out the rest of the tale. ‘All of you in the city are certainly brothers,’ we shall say to them in telling the tale, ‘but the god, in fashioning those of you who are competent to rule, mixed gold in at their birth; this is why they are most honored; in auxiliaries, silver; and iron and bronze in the farmers and the other craftsmen. So, because you’re all related, although for the most part you’ll produce offspring like yourselves, it sometimes happens that a silver child will be born from a golden parent, a golden child from a silver parent, and similarly all the others from each other. Hence the god commands the rulers first and foremost to be of nothing such good guardians and to keep over nothing so careful a watch as the children, seeing which of these metals is mixed in their souls. And, if a child of theirs should be born with an admixture of bronze or iron, by no manner of means are they to take pity on it, but shall assign the proper value to its nature and thrust it out among the craftsmen or the farmers; and, again, if from these men one should naturally grow who has an admixture of gold or silver, they will honor such ones and lead them up, some to the guardian group, others to the auxiliary, believing that there is an oracle that the city will be destroyed when an iron or bronze man is its guardian.’ So, have you some device for persuading them of this tale?”

According to Plato, there are three types of people in society. Philosophers and kings are “gold,” soldiers and other auxiliaries are “silver,” while the rest of the people who produce resources are “bronze.”
Book V: 442 a-b

“And these two, thus trained and having truly learned their own business and been educated, will be set over the desiring—which is surely most of the soul in each and by nature most insatiable for money—and they’ll watch it for fear of its being filled with the so-called pleasures of the body and thus becoming big and strong, and then not minding its own business, but attempting to enslave and rule what is not appropriately ruled by its class and subverting everyone’s entire life.”

“Most certainly,” he said.

“So,” I [Socrates] said, “wouldn’t these two do the finest job of guarding against enemies from without on behalf of all of the soul and the body, the one deliberating, the other making war, following the ruler, and with its courage fulfilling what has been decided?”

Book V: 458 c - 459 d

“...I’ll consider, if you permit me, how the rulers will arrange these things when they come into being and whether their accomplishment would be most advantageous of all for both the city and the guardians. I’ll attempt to consider this with you first, and the other later, if you permit.”

“I do permit,” he said, “so make your consideration.”

“Well, then,” I said, “I suppose that if the rulers are to be worthy of the name, and their auxiliaries likewise, the latter will be willing to do what they are commanded and the former to command. In some of their commands the rulers will in their turn be obeying the laws; in others—all those we leave to their discretion—they will imitate the laws...”

“First, although they are all noble, aren’t there some among them who are and prove to be best?”

“There are.”

“Do you breed from all alike, or are you eager to breed from the best as much as possible?”

“...My, my, dear comrade,” I said, “how very much we need eminent rulers after all, if it is also the same with the human species.”

“Of course it is,” he said, “but why does that affect the rulers?”

Money led people to attempt to enslave and rule through subversion.

One part of the government should deliberate while the other should make war and follow the ruler.

The rulers will command their auxiliaries and the rest of the people will follow.
...To this,” I said. “It’s likely that our rulers will have to use a throng of lies and deceptions for the benefit of the ruled. And, of course, we said that everything of this sort is useful as a form of remedy.”

“And we were right,” he said.

“Now, it seems it is not the least in marriages and procreations, that this ‘right’ comes into being.”

“...And all this must come to pass without being noticed by anyone except the rulers themselves if the guardians’ herd is to be as free as possible from factions.”

Book VI: 488 a-e and 489 a

“...Conceive something of this kind happening either on many ships or one. Though the shipowner surpasses everyone on board in height and strength, he is rather deaf and likewise somewhat shortsighted, and his knowledge of seamanship is pretty much on the same level. The sailors are quarreling with one another about the piloting, each supposing he ought to pilot, although he has never learned the art and can’t produce his teacher or prove there was a time when was learning it. Besides this, they claim it isn’t even teachable and are ready to cut to pieces the man who says it is teachable. And they are always crowded around the shipowner himself, begging and doing everything so that he’ll turn the rudder over to them. And sometimes, if they fail at persuasion and other men succeed at it, they either kill the others or throw them out of the ship. Enchaining the noble shipowner with mandrake, drink, or something else, they rule the ship using what’s in it; and drinking and feasting, they sail as such men would be thought likely to sail. Besides this, they praise and call ‘skilled sailor,’ ‘pilot,’ and ‘knower of the ship’s business’ the man who is clever at figuring out how they will get the rule, either by persuading or forcing the shipowner, while the man who is not of this sort they blame as useless. They don’t know that for the true pilot it is necessary to pay careful attention to the year, seasons, heaven, stars, winds, and everything that’s proper to the art, even if he’s going to be skilled at ruling a ship. And they don’t suppose it’s possible to acquire the art and practice of how one can get hold of the helm whether the others wish it or not, and at the same time to acquire the pilot’s skill. So with such things happening on the ships, don’t you believe that the true pilot will really be called a stargazer, a prater and

To be free of factions, new generations of the ruling class must continue.

It will be the person who is clever at figuring out how to obtain power that will be the rulers, not necessarily the person who is the best for the job. Plato believed that this is the same problem with philosophers and kings – the kings or rulers are clever enough to figure out how to obtain the power to rule, but it is the philosophers who have the skills to rule.
“Indeed, he will,” said Adeimantus.

“Now,” I [Socrates] said, “I don’t suppose you need to scrutinize the image to see that it resembles the cities in their disposition toward the true philosophers, by you understand what I mean...”

**Excerpts from The Federalist Papers**

*Federalist No. 10 (1787) by James Madison*

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects...

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

The inference to which we are brought is, that the CAUSES of faction cannot be removed, and that relief is only to be sought in the means of controlling its EFFECTS...

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

Madison defines faction as a number of citizens with a common interest acting against the rights of other citizens or against the interests of the community.

There are two cures for faction: removing its causes or controlling its effects.

The causes of faction cannot be removed; only the effects of factions can be controlled.

Republican government is a way to control the effects of factions through elections and a greater number of citizens over a larger space.
As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived, it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of the government, but also whenever any one of the departments may commit encroachments on the chartered authorities of the others. The several departments being perfectly co-ordinate by the terms of their common commission, none of them, it is evident, can pretend to an exclusive or superior right of settling the boundaries between their respective powers; and how are the encroachments of the stronger to be prevented, or the wrongs of the weaker to be redressed, without an appeal to the people themselves, who, as the grantors of the commissions, can alone declare its true meaning, and enforce its observance?

... In the next place, it may be considered as an objection inherent in the principle, that as every appeal to the people would carry an implication of some defect in the government, frequent appeals would, in a great measure, deprive the government of that veneration which time bestows on every thing, and without which perhaps the wisest and freest governments would not possess the requisite stability. If it be true that all governments rest on opinion, it is no less true that the strength of opinion in each individual, and its practical influence on his conduct, depend much on the number which he supposes to have entertained the same opinion. The reason of man, like man himself, is timid and cautious when left alone, and acquires firmness and confidence in proportion to the number with which it is associated. When the examples which fortify opinion are ancient as well as numerous, they are known to have a double effect. In a nation of philosophers, this consideration ought to be disregarded. A reverence for the laws would be sufficiently inculcated by the voice of an enlightened reason. But a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato. And in every other nation, the most rational government will not find it a superfluous advantage to have the prejudices of the community on its side.
It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal. But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State. But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the

Madison asserted that because humans are not angels, government is necessary to keep them in check. But neither is the government itself angelic, and it also needs to have checks on it. People will be ambitious and will try to gain more power. The Constitution protects people from the government and protects government from itself.

Experience has taught people that government must have boundaries. People (both the citizens and those elected to office) can be expected to sometimes choose unwisely or corruptly, so the structure of the government system must provide boundaries.

In a republican government, the legislature holds the majority of the power. In order to check that power, the United States legislature
nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified.

*Federalist No. 55 (1788) by James Madison*

The number of which the House of Representatives is to consist, forms another and a very interesting point of view, under which this branch of the federal legislature may be contemplated. Scarce any article, indeed, in the whole Constitution seems to be rendered more worthy of attention, by the weight of character and the apparent force of argument with which it has been assailed. The charges exhibited against it are, first, that so small a number of representatives will be an unsafe depositary of the public interests; secondly, that they will not possess a proper knowledge of the local circumstances of their numerous constituents; thirdly, that they will be taken from that class of citizens which will sympathize least with the feelings of the mass of the people, and be most likely to aim at a permanent elevation of the few on the depression of the many; fourthly, that defective as the number will be in the first instance, it will be more and more disproportionate, by the increase of the people, and the obstacles which will prevent a correspondent increase of the representatives...

Sixty or seventy men may be more properly trusted with a given degree of power than six or seven. But it does not follow that six or seven hundred would be proportionably a better depositary. And if we carry on the supposition to six or seven thousand, the whole reasoning ought to be reversed. The truth is, that in all cases a certain number at least seems to be necessary to secure the benefits of free consultation and discussion, and to guard against too easy a combination for improper purposes; as, on the other hand, the number ought at most to be kept within a certain limit, in order to avoid the confusion and intemperance of a multitude. In all very numerous assemblies, of whatever character composed, passion never fails to wrest the sceptre from reason. Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob...

What change of circumstances, time, and a fuller population of our country may produce, requires a prophetic spirit to declare, is divided into two houses: the House of Representatives and the Senate. At the time of the writing and ratification of the Constitution, the House and Senate were elected in different manners. Each house has different responsibilities. For instance, the Senate approves treaties and officers the president recommends, while all bills related to appropriations (money spent) start in the House.

The four main arguments against the proposed number of representatives in the House; critics have charged that there were too few representatives.

There should be enough representatives in government in order to consult with each other and discuss important issues but not too many to cause confusion.

Madison stated that if every person in Athens had been as virtuous and knowledgeable as Socrates, there still would have been disagreement.
which makes no part of my pretensions. But judging from the circumstances now before us, and from the probable state of them within a moderate period of time, I must pronounce that the liberties of America cannot be unsafe in the number of hands proposed by the federal Constitution...

As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. Were the pictures which have been drawn by the political jealousy of some among us faithful likenesses of the human character, the inference would be, that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another.

To a greater degree than any other form of government, republican government will protect against evil and corruption, while encouraging virtue among the people.

Critical Thinking Questions

1. How do Plato and Madison differ in their understanding of human nature?

2. What are the remedies for faction according to Plato and Madison?

3. Plato believed that government power should be in the hands of philosophers. Explain his reasoning. How does Madison differ from Plato regarding government power?

4. According to Madison, how would the government under the U.S. Constitution remedy many of the problems faced by the ancient republics?
Handout B: Excerpts from Federalist No. 63 (1788) by James Madison

Directions: Read the excerpts from Federalist No. 63 below, then write a paragraph explaining what Madison believed were the some of the problems with ancient republican governments. Italics are Madison’s and show emphasis.

...The objects of government may be divided into two general classes: the one depending on measures which have singly an immediate and sensible operation; the other depending on a succession of well-chosen and well-connected measures, which have a gradual and perhaps unobserved operation. The importance of the latter description to the collective and permanent welfare of every country, needs no explanation. And yet it is evident that an assembly elected for so short a term as to be unable to provide more than one or two links in a chain of measures, on which the general welfare may essentially depend, ought not to be answerable for the final result, any more than a steward or tenant, engaged for one year, could be justly made to answer for places or improvements which could not be accomplished in less than half a dozen years. Nor is it possible for the people to estimate the share of influence which their annual assemblies may respectively have on events resulting from the mixed transactions of several years. It is sufficiently difficult to preserve a personal responsibility in the members of a numerous body, for such acts of the body as have an immediate, detached, and palpable operation on its constituents.

The proper remedy for this defect must be an additional body in the legislative department, which, having sufficient permanency to provide for such objects as require a continued attention, and a train of measures, may be justly and effectually answerable for the attainment of those objects...

Thus far I have considered the circumstances which point out the necessity of a well-constructed Senate only as they relate to the representatives of the people. To a people as little blinded by prejudice or corrupted by flattery as those whom I address, I shall not scruple to add, that such an institution may be sometimes necessary as a defense to the people against their own temporary errors and delusion. As the cool and deliberate sense of the community ought, in all governments, and actually will, in all free governments, ultimately prevail over the views of its rulers; so there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind? What bitter anguish would not the people of Athens have often escaped if their government...
had contained so provident a safeguard against the tyranny of their own passions? Popular liberty might then have escaped the indelible reproach of decreeing to the same citizens the hemlock on one day and statues on the next...

It adds no small weight to all these considerations, to recollect that history informs us of no long-lived republic which had not a senate. Sparta, Rome, and Carthage are, in fact, the only states to whom that character can be applied. In each of the two first there was a senate for life. The constitution of the senate in the last is less known. Circumstantial evidence makes it probable that it was not different in this particular from the two others. It is at least certain, that it had some quality or other which rendered it an anchor against popular fluctuations; and that a smaller council, drawn out of the senate, was appointed not only for life, but filled up vacancies itself. These examples, though as unfit for the imitation, as they are repugnant to the genius, of America, are, notwithstanding, when compared with the fugitive and turbulent existence of other ancient republics, very instructive proofs of the necessity of some institution that will blend stability with liberty. I am not unaware of the circumstances which distinguish the American from other popular governments, as well ancient as modern; and which render extreme circumspection necessary, in reasoning from the one case to the other. But after allowing due weight to this consideration, it may still be maintained, that there are many points of similitude which render these examples not unworthy of our attention. Many of the defects, as we have seen, which can only be supplied by a senatorial institution, are common to a numerous assembly frequently elected by the people, and to the people themselves. There are others peculiar to the former, which require the control of such an institution. The people can never wilfully betray their own interests; but they may possibly be betrayed by the representatives of the people; and the danger will be evidently greater where the whole legislative trust is lodged in the hands of one body of men, than where the concurrence of separate and dissimilar bodies is required in every public act.

The difference most relied on, between the American and other republics, consists in the principle of representation; which is the pivot on which the former move, and which is supposed to have been unknown to the latter, or at least to the ancient part of them. The use which has been made of this difference, in reasonings contained in former papers, will have shown that I am disposed neither to deny its existence nor to undervalue its importance. I feel the less restraint, therefore, in observing, that the position concerning the ignorance of the ancient governments on the subject of representation, is by no means precisely true in the latitude commonly given to it. Without entering into a disquisition which here would be misplaced, I will refer to a few known facts, in support of what I advance.

In the most pure democracies of Greece, many of the executive functions were performed, not by the people themselves, but by officers elected by the people, and representing them in their executive capacity.

Prior to the reform of Solon, Athens was governed by nine Archons, annually elected by the people at large. The degree of power delegated to them seems to be left in great obscurity. Subsequent to that period, we find an assembly, first of four, and afterwards of six hundred members, annually elected by the people; and partially representing them in their legislative capacity, since they were not only associated with the people in the function of making laws, but had the exclusive
right of originating legislative propositions to the people. The senate of Carthage, also, whatever might be its power, or the duration of its appointment, appears to have been elective by the suffrages of the people. Similar instances might be traced in most, if not all the popular governments of antiquity.

Lastly, in Sparta we meet with the Ephori, and in Rome with the Tribunes; two bodies, small indeed in numbers, but annually elected by the whole body of the people, and considered as the representatives of the people, almost in their plenipotentiary capacity. The Cosmi of Crete were also annually elected by the people, and have been considered by some authors as an institution analogous to those of Sparta and Rome, with this difference only, that in the election of that representative body the right of suffrage was communicated to a part only of the people.

From these facts, to which many others might be added, it is clear that the principle of representation was neither unknown to the ancients nor wholly overlooked in their political constitutions. The true distinction between these and the American governments, lies in the total exclusion of the people, in their collective capacity, from any share in the latter, and not in the total exclusion of the representatives of the people from the administration of the former. The distinction, however, thus qualified, must be admitted to leave a most advantageous superiority in favor of the United States. But to insure to this advantage its full effect, we must be careful not to separate it from the other advantage, of an extensive territory. For it cannot be believed, that any form of representative government could have succeeded within the narrow limits occupied by the democracies of Greece.

In answer to all these arguments, suggested by reason, illustrated by examples, and enforced by our own experience, the jealous adversary of the Constitution will probably content himself with repeating, that a senate appointed not immediately by the people, and for the term of six years, must gradually acquire a dangerous pre-eminence in the government, and finally transform it into a tyrannical aristocracy.

To this general answer, the general reply ought to be sufficient, that liberty may be endangered by the abuses of liberty as well as by the abuses of power; that there are numerous instances of the former as well as of the latter; and that the former, rather than the latter, are apparently most to be apprehended by the United States. But a more particular reply may be given.

Before such a revolution can be effected, the Senate, it is to be observed, must in the first place corrupt itself; must next corrupt the State legislatures; must then corrupt the House of Representatives; and must finally corrupt the people at large. It is evident that the Senate must be first corrupted before it can attempt an establishment of tyranny. Without corrupting the State legislatures, it cannot prosecute the attempt, because the periodical change of members would otherwise regenerate the whole body. Without exerting the means of corruption with equal success on the House of Representatives, the opposition of that coequal branch of the government would inevitably defeat the attempt; and without corrupting the people themselves, a succession of new representatives would speedily restore all things to their pristine order. Is there any man who can seriously persuade himself that the proposed Senate can, by any possible means within the compass of human address, arrive at the object of a lawless ambition, through all these obstructions?
Handout A: Excerpts from the Massachusetts Body of Liberties (1641)

Directions: As you read, think about the ways in which the Massachusetts Body of Liberties protects economic and civil liberties, and how some of the same rights are protected by the Constitution and Bill of Rights. Be prepared to discuss your answers.

1. No man's life shall be taken away, no man's honor or good name shall be stained, no man's person shall be arrested, restrained, banished, dismembered, nor any ways punished, no man shall be deprived of his wife or children, no man's goods or estate shall be taken away from him, nor in any way damaged under color of law, or countenance of authority, unless it be by virtue or equity of some express law of the Country warranting the same established by a General Court and sufficiently published, or in case of the defect of a law in any particular case by the word of God. And in capital cases, or in cases concerning dismembering or banishment, according to that word to be judged by the General Court.

2. Every person within this jurisdiction, whether inhabitant or foreigner, shall enjoy the same justice and law, that is general for the Plantation, which we constitute and execute one towards another, without partiality or delay.

8. No man's cattle or goods of what kind soever shall be pressed or taken for any public use or service, unless it be by warrant grounded upon some act of the General Court, nor without such reasonable prices and hire as the ordinary rates of the Country do afford. And if his cattle or goods shall perish or suffer damage in such service, the owner shall be sufficiently recompensed.

11. All persons which are of the age 21 years and of right understanding and memory, whether excommunicate or condemned, shall have full power to make their wills and testaments, and other lawful alienations of their lands and estates.

13. No man shall be rated [taxed] here for any estate or revenue he hath in England, or foreign parts, till it be transported hither.

15. All covenous [conspired] or fraudulent alienations [transfer of ownership] or conveyances of lands, tenements, or any hereditaments, shall be of no validity to defeat [free] any man from due debts or legacies, or from any just title, claim or possession of that which is thus fraudulently conveyed.

16. Every inhabitant that is a householder shall have free fishing and fowling in any great ponds and bays, coves and rivers, so far as the sea ebbs and flows within the precincts of the town where they dwell, unless the Freemen of the same town or the General Court have otherwise appropriated them, provided that this shall not be extended to give leave to any man to come upon others property without their leave.

17. Every man of or within this jurisdiction shall have free liberty, notwithstanding any civil power, to remove both himself and his family at their pleasure out of the same, provided there be no legal impediment to the contrary.

23. No man shall be adjudged to pay for detaining any debt from any creditor above eight pounds in the hundred for one year (8% simple interest), and not above that rate proportionable for all sums whatsoever, neither shall this be a color or countenance to
allow any usury amongst us contrary to the law of God.

29. In all actions at law it shall be the liberty of the plaintiff and defendant by mutual consent to choose whether they will be tried by the bench or by a jury, unless it be where the law upon just reason hath otherwise determined. The like liberty shall be granted to all persons in criminal cases.

40. No conveyance, deed, or promise whatsoever shall be of validity if it be gotten by violence, imprisonment, threatening, or any kind of forcible compulsion called duress.

42 No man shall be twice sentenced by civil justice for one and the same crime, offense, or trespass.
Handout B: *Memorial and Remonstrance against Religious Assessments* by James Madison (1785)

**Directions:** As you read, highlight the reasons religious freedom is fundamental according to Madison, underline the reasons Madison gives for keeping religion and government separate, and circle the reasons that religion should not be supported by taxes according to Madison. Then answer the questions that follow.

**Background:** Madison wrote the *Memorial and Remonstrance against Religious Assessments* in response to a proposed bill that would allow for taxes to support Christian ministers or teachers in Virginia.

**To the Honorable the General Assembly of the Commonwealth of Virginia A Memorial and Remonstrance**

We the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last Session of General Assembly, entitled “A Bill establishing a provision for Teachers of the Christian Religion,” and conceiving that the same if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said Bill,

1. Because we hold it for a fundamental and undeniable truth, “that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence.” [**Virginia Declaration of Rights**, art. 16] The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the General Authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no man’s right is abridged by the institution of Civil Society and that Religion is wholly exempt from its cognizance. True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined, but the will of the majority; but it is also true that the majority may trespass on the rights of the minority.
2. Because if Religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the co-ordinate departments, more necessarily is it limited with regard to the constituents. The preservation of a free Government requires not merely, that the metes and bounds which separate each department of power be invariably maintained; but more especially that neither of them be suffered to overlap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves nor by an authority derived from them, and are slaves.

3. Because it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of Citizens, and one of the noblest characteristics of the late Revolution. The free men of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

4. Because the Bill violates that equality which ought to be the basis of every law, and which is more indispensible, in proportion as the validity or expediency of any law is more liable to be impeached. If “all men are by nature equally free and independent,” [Virginia Declaration of Rights, art. 1] all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an “equal title to the free exercise of Religion according to the dictates of Conscience.” [Virginia Declaration of Rights, art. 16] Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God, therefore, not to man, must an account of it be rendered. As the Bill violates equality by subjecting some to peculiar burdens, so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Menonists the only sects who think a compulsive support of their Religions unnecessary and unwarrantable? Can their piety alone be entrusted with the care of public worship? Ought their Religions to be endowed above all others with extraordinary privileges by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations to believe that they either covet pre-eminences over their fellow citizens or that they will be seduced from the common opposition to the measure.

5. Because the Bill implies either that the Civil Magistrate is a competent Judge of Religious Truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant
pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world: the second an unhallowed perversion of the means of salvation.

6. Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself, for every page of it disavows a dependence on the powers of this world: it is a contradiction to fact; for it is known that this Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them, and not only during the period of miraculous aid, but long after it had been left to its own evidence and the ordinary care of Providence. Nay, it is a contradiction in terms; for a Religion not invented by human policy, must have pre-existed and been supported, before it was established by human policy. It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies to trust it to its own merits.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior to its incorporation with Civil policy. Propose a restoration of this primitive State in which its Teachers depended on the voluntary rewards of their flocks, many of them predict its downfall. On which Side ought their testimony to have greatest weight, when for or when against their interest?

8. Because the establishment in question is not necessary for the support of Civil Government. If it be urged as necessary for the support of Civil Government only as it is a means of supporting Religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If Religion be not within the cognizance of Civil Government how can its legal establishment be necessary to Civil Government? What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of the Civil authority; in many instances they have been seen upholding the thrones of political tyranny: in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an established Clergy convenient auxiliaries. A just Government instituted to secure & perpetuate it needs them not. Such a Government will be best supported by protecting every Citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another.

9. Because the proposed establishment is a departure from that generous policy, which, offering an Asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an Asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be in its
present form from the Inquisition, it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthropy in their due extent, may offer a more certain repose from his Troubles.

10. Because it will have a like tendency to banish our Citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration by revoking the liberty which they now enjoy, would be the same species of folly which has dishonoured and depopulated flourishing kingdoms.

11. Because it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion has produced among its several sects. Torrents of blood have been spilt in the old world, by vain attempts of the secular arm, to extinguish Religious discord, by proscribing all difference in Religious opinion. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American Theatre has exhibited proofs that equal and compleat liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State. If with the salutary effects of this system under our own eyes, we begin to contract the bounds of Religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the Bill has transformed “that Christian forbearance, love and charity,” [Virginia Declaration of Rights, art. 16] which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased. What mischiefs may not be dreaded, should this enemy to the public quiet be armed with the force of a law?

12. Because the policy of the Bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false Religions; and how small is the former! Does the policy of the Bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of revelation from coming into the Region of it; and countenances by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of Levelling as far as possible, every obstacle to the victorious progress of Truth, the Bill with an ignoble and unchristian timidity would circumscribe it with a wall of defence against the encroachments of error.

13. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case, where it is deemed invalid and dangerous? And what may be the effect of so striking an example of impotency in the Government, on its general authority?

14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens, and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. “The people of the respective counties are indeed requested to signify their opinion
respecting the adoption of the Bill to the next Session of Assembly.” But the representation must be made equal, before the voice either of the Representatives or of the Counties will be that of the people. Our hope is that neither of the former will, after due consideration, espouse the dangerous principle of the Bill. Should the event disappoint us, it will still leave us in full confidence, that a fair appeal to the latter will reverse the sentence against our liberties.

15. Because finally, “the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience” is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the “Declaration of those rights which pertain to the good people of Virginia, as the basis and foundation of Government,” it is enumerated with equal solemnity, or rather studied emphasis. Either then, we must say, that the Will of the Legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred: Either we must say, that they may controul the freedom of the press, may abolish the Trial by Jury, may swallow up the Executive and Judiciary Powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary Assembly or, we must say, that they have no authority to enact into law the Bill under consideration. We the Subscribers say, that the General Assembly of this Commonwealth have no such authority: And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand, turn their Councils from every act which would affront his holy prerogative, or violate the trust committed to them: and on the other, guide them into every measure which may be worthy of his blessing, may redound to their own praise, and may establish more firmly the liberties, the prosperity and the happiness of the Commonwealth.

Critical Thinking Questions

1. What was the purpose of the Memorial and Remonstrance against Religious Assessments?

2. Why did Madison believe religious freedom is fundamental?

3. Did Madison believe that religion and government should be separate? Why or why not?

4. How was the Memorial and Remonstrance against Religious Assessments related to both civil and economic freedom?
The European settlement of North America produced a land of unprecedented religious diversity. Numerous religious sects competed for believers as well as for government recognition. The need for peaceful coexistence prompted some colonies to move toward official religious toleration. This meant that the religious majority in those colonies would accept and not politically disadvantage members of minority religions.

**Colonial Experiments in Toleration**
Rhode Island, Maryland, and Pennsylvania made the first strides towards religious liberty. The Providence Agreement (1637) limited the authority of government to matters “only in civil things,” which leads some scholars to credit the colonial settlement of Providence, in what is now Rhode Island, with America’s first legal protection of religious matters. The Maryland Assembly passed the Act Concerning Religion (also known as the Maryland Toleration Act) in 1649. This law protected Roman Catholics from Protestant discrimination, but was soon repealed. Pennsylvania was established in 1681 as a refuge for Christians seeking “freedom of conscience,” though only Christians could hold public office.

Rhode Island was chartered in 1663 with no established faith and full free exercise. The colony was a “haven for the cause of conscience” that welcomed people not tolerated elsewhere—Quakers, Jews, and others, including non-believers. Rhode Island became the first colony founded on the principles of church-state separation and freedom of worship for all.

**Toward Free Exercise**
By the time of American independence, most of the 13 colonies had official (or established) churches. The Massachusetts Constitution (1780) established religion, but affirmed a citizen’s right to worship according to his or her own conscience. Virginia took bold steps towards ending its state church in 1786 with the passage of the Virginia Statute for Religious Freedom.

The idea that religion and government should be separate reached the national level as well. The U.S. Constitution, ratified in 1789, was not based on a religion and required that “no religious test shall ever be required as a qualification to any office or public trust under the United States.” (The Constitution served to limit only the national government; state governments could impose religious tests for public office.)

Almost immediately after the national Constitution was ratified, Congress set to work on a list of amendments. It was in part the proposed amendments that brought President George Washington, along with Secretary of State Thomas Jefferson and others, to the city of Newport, Rhode Island, in August, 1790.

**Washington’s Promise**
Washington sought to gather support for the ratification of the Bill of Rights, which included protections for religious liberty. The First Amendment read in part, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Throngs of Newport residents came to hear the new President speak, including leaders of the city’s...
many religious denominations. Amidst the crowd in Newport were members of the city’s Jewish congregation, Jeshuat Israel Synagogue, today known as Touro Synagogue. The synagogue’s Warden, Moses Seixas, wrote a letter to Washington on behalf of the congregation. Seixas’s letter expressed the congregation’s joy at having Washington as a leader, and their delight in living under a Constitution that they were confident had finally afforded true religious liberty to all.

Four days after leaving Newport, Washington wrote a reply to the congregation. Washington’s reply went beyond a customary acknowledgement of their letter. He not only echoed the congregation’s belief that the United States was now a nation that gave “to bigotry no sanction, [and] to persecution no assistance,” but continued on to make a clear distinction between the America of old and the America of new: the United States had moved from mere religious toleration to true religious liberty. (Religious toleration assumes that government can either give or take away the “privilege” of exercising one’s religion. By contrast, religious liberty is an inalienable right that cannot be taken away by the civil state.)

Washington wrote: “All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of as if it were the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights....” His sentiments echoed the ideas of the Declaration of Independence; namely, that all were born with inalienable rights and the liberty to exercise them freely.

Washington’s letter to the Hebrew Congregation in Newport, Rhode Island has come to be regarded as one of the most important pronouncements of a new philosophy regarding religion: government exists in part for the protection of religious liberty and matters of conscience.

The national government did not have the power to force states to disestablish their churches. All the states ended their establishments by 1833.

Critical Thinking Questions

1. In what ways did the colonies of Maryland and Pennsylvania serve as models of religious toleration during the colonial period? How did Rhode Island serve as a model of free exercise?

2. Why did President Washington and other members of his administration visit Newport, Rhode Island, in 1790?

3. In his letter to the Hebrew Congregation in Newport, Rhode Island, what did George Washington declare to be the key difference between the colonial period and 1790 with regard to religion in America? How did he connect the “liberty of conscience” to the Declaration of Independence?
Handout B: Defining Toleration and Liberty

Directions: Read each of the following quotations on toleration and liberty and discuss them with a partner. Then write a complete definition of each term using ideas from the Handout A: From Establishment to Free Exercise Essay, the focus quotes below, and your own ideas. Be prepared to share your definitions with the class.

Quotation A: Toleration
“All men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience.” (Mason’s draft for Virginia’s Declaration of Rights)

Quotation B: Liberty
“All men are equally entitled to the full and free exercise of religion according to the dictates of conscience.” (Madison’s amendment to Mason’s draft)
Handout C: Religion and America’s Past – Toleration, Liberty, or Both?

Directions: Read your assigned document excerpt and complete your portion of Handout D: Religion and America’s Past – Toleration, Liberty, or Both? Graphic Organizer.

1. “God require[s] not a uniformity of religion to be enacted and enforced in any civil state... the permission of other consciences and worships than a state professe[s] only can (according to God) procure a firm and lasting peace...true civility and Christianity may both flourish in a state or kingdom, notwithstanding the permission of divers[e] and contrary consciences, either of Jew or Gentile...” – “A Plea for Religious Liberty” by Roger Williams, 1644

2. “[N]o person or persons... professing to believe in Jesus Christ, shall from henceforth be any waies troubled, Molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof within this Province.” – Act Concerning Religion, Maryland, 1649

3. “[O]ur royal will and pleasure is, that no person within the said colony, at any time hereafter, shall be any way molested, punished, disquieted, or called in question, for any differences in opinion in matters of religion, and... that all persons may, from time to time, and at all times hereafter, freely and fully have and enjoy his and their own judgments and consciences, in matters of religious concernments...” – Charter of the Colony of Rhode Island, 1663
4. “[N]o Person or Persons, inhabiting in this Province or Territories, who shall confess and acknowledge One almighty God, the Creator, Upholder and Ruler of the World; and profess him or themselves obliged to live quietly under the Civil Government, shall be in any Case molested or prejudiced, in his or their Person or Estate, because of his or their conscientious Persuasion or Practice, nor be compelled to frequent or maintain any religious Worship, Place or Ministry, contrary to his or their Mind, or to do or suffer any other Act or Thing, contrary to their religious Persuasion ... AND ... all Persons who also profess to believe in Jesus Christ, the Savior of the World, shall be capable ... to serve this Government in any Capacity...” –Pennsylvania Charter of Privileges, 1701

5. “It is the right as well as the duty of all men in society, publicly and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments, provided he doth not disturb the public peace or obstruct others in their religious worship.” –Massachusetts Constitution, 1780

6. “[N]o man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief, but that all men shall be free to profess, and by argument to maintain, their opinions in matters of Religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.” –Virginia Statute for Religious Freedom, 1786

7. “[N]o religious test shall ever be required as a qualification to any office or public trust under the United States.” –United States Constitution, 1787

8. “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” –First Amendment, 1791
Handout D: Religion and America’s Past – Toleration, Liberty, or Both? Graphic Organizer

**Directions:** After reading your excerpt from Handout C, place a check mark in the column that you believe best fits that document: is it an example of religious toleration, religious liberty, or both? Finally, write one sentence explaining why you categorized it as you did.

<table>
<thead>
<tr>
<th>Document/Year/Type</th>
<th>Toleration</th>
<th>Liberty</th>
<th>Both</th>
<th>Reasoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. “A Plea for Religious Liberty” by Roger Williams, 1644, essay</td>
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<tr>
<td>2. Act Concerning Religion, Maryland, 1649, state legal document</td>
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<td>3. Charter of the Colony of Rhode Island, 1663, colonial legal document</td>
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<tr>
<td>5. Massachusetts Constitution, 1780, state legal document</td>
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<td>7. United States Constitution, 1789, national legal document</td>
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<td>8. The First Amendment, 1791, national legal document</td>
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</table>
Gentlemen,

While I receive, with much satisfaction, your Address replete with expressions of affection and esteem; I rejoice in the opportunity of assuring you, that I shall always retain a grateful remembrance of the cordial welcome I experienced in my visit to Newport, from all classes of Citizens.

The reflection on the days of difficulty and danger which are past is rendered the more sweet, from a consciousness that they are succeeded by days of uncommon prosperity and security. If we have wisdom to make the best use of the advantages with which we are now favored, we cannot fail, under the just administration of a good government, to become a great and happy people.

The Citizens of the United States of America have a right to applaud themselves for having given to mankind examples of an enlarged and liberal policy: a policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.

It would be inconsistent with the frankness of my character not to avow that I am pleased with your favorable opinion of my Administration, and fervent wishes for my felicity. May the children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other Inhabitants; while every one shall sit in safety under his own vine and figtree, and there shall be none to make him afraid.

May the father of all mercies scatter light and not darkness in our paths, and make us all in our several vocations useful here, and in his own due time and way everlastingly happy.

Comprehension and Critical Thinking Questions

1. What does Washington believe will maintain Americans as a “great and happy people”?

2. What does Washington declare that all in America possess?

3. What, according to Washington, are the only requirements of citizenship?

4. Keeping in mind that “toleration” refers to a government policy, was Washington correct that Americans had moved from religious toleration to religious liberty?

5. Is there any significance in the fact that Washington closed his letter with a blessing?
6. One historian has described Washington’s letter as articulating the “conscience of a nation” with respect to religious liberty. How would you assess that claim? Explain.

7. Religious conflict has been prevalent and bloody throughout world history. Why do you think that, with a few exceptions, Americans of various faiths have been able to live side by side in peace? Explain.
Handout A: Articles of Confederation: March 1, 1781

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Articles of Confederation and perpetual Union between the states of New Hampshire, Massachusetts-bay Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

I.
The Stile of this Confederacy shall be “The United States of America”.

II.
Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.

III.
The said States hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

IV.
The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State, of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

V.
For the most convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislatures of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less
than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States. In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests or imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

VI.

No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, Prince or State; nor shall any person holding any office of profit or trust under the United States, or any of them, accept any present, emolument, office or title of any kind whatever from any King, Prince or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any King, Prince or State, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessel of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defense of such State, or its trade; nor shall any body of forces be kept up by any State in time of peace, except such number only, as in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, except such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the Kingdom or State and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless
such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

VII.

When land forces are raised by any State for the common defense, all officers of or under the rank of colonel, shall be appointed by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

VIII.

All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

IX.

The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article — of sending and receiving ambassadors — entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever — of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated — of granting letters of marque and reprisal in times of peace — appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other causes whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall
be reduced to thirteen; and from that number
not less than seven, nor more than nine names
as Congress shall direct, shall in the presence of
Congress be drawn out by lot, and the persons
whose names shall be so drawn or any five of
them, shall be commissioners or judges, to
hear and finally determine the controversy, so
always as a major part of the judges who shall
hear the cause shall agree in the determination:
and if either party shall neglect to attend at
the day appointed, without showing reasons,
which Congress shall judge sufficient, or being
present shall refuse to strike, the Congress shall
proceed to nominate three persons out of each
State, and the secretary of Congress shall strike
in behalf of such party absent or refusing; and
the judgment and sentence of the court to be
appointed, in the manner before prescribed,
shall be final and conclusive; and if any of the
parties shall refuse to submit to the authority
of such court, or to appear or defend their claim
or cause, the court shall nevertheless proceed
to pronounce sentence, or judgment, which
shall in like manner be final and decisive, the
judgment or sentence and other proceedings
being in either case transmitted to Congress,
and lodged among the acts of Congress for the
security of the parties concerned: provided that
every commissioner, before he sits in judgment,
shall take an oath to be administered by one of
the judges of the supreme or superior court of
the State, where the cause shall be tried, ‘well
and truly to hear and determine the matter in
question, according to the best of his judgment,
without favor, affection or hope of reward’:
provided also, that no State shall be deprived of
territory for the benefit of the United States.

All controversies concerning the private right
of soil claimed under different grants of two or
more States, whose jurisdictions as they may
respect such lands, and the States which passed
such grants are adjusted, the said grants or
either of them being at the same time claimed to
have originated antecedent to such settlement
of jurisdiction, shall on the petition of either
party to the Congress of the United States, be
finally determined as near as may be in the same
manner as is before prescribed for deciding
disputes respecting territorial jurisdiction
between different States.

The United States in Congress assembled shall
also have the sole and exclusive right and
power of regulating the alloy and value of coin
struck by their own authority, or by that of
the respective States — fixing the standards of
weights and measures throughout the United
States — regulating the trade and managing all
affairs with the Indians, not members of any of
the States, provided that the legislative right of
any State within its own limits be not infringed
or violated — establishing or regulating post
offices from one State to another, throughout
all the United States, and exacting such postage
on the papers passing through the same as may
be requisite to defray the expenses of the said
office — appointing all officers of the land forces,
in the service of the United States, excepting
regimental officers — appointing all the officers
of the naval forces, and commissioning all
officers whatever in the service of the United
States — making rules for the government and
regulation of the said land and naval forces, and
directing their operations.

The United States in Congress assembled shall
have authority to appoint a committee, to sit
in the recess of Congress, to be denominated
‘A Committee of the States’, and to consist of
one delegate from each State; and to appoint
such other committees and civil officers as may
be necessary for managing the general affairs
of the United States under their direction —
to appoint one of their members to preside,
provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses — to borrow money, or emit bills on the credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted — to build and equip a navy — to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the legislature of each State shall appoint the regimental officers, raise the men and clothe, arm and equip them in a solid-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled. But if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped in the same manner as the quota of each State, unless the legislature of such State shall judge that such extra number cannot be safely spread out in the same, in which case they shall raise, officer, clothe, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque or reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of the majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several States.

X.

The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of the nine States, shall from time to time think expedient to vest with; provided that no power be delegated to the said Committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled be requisite.
XI.  
Canada acceding to this confederation, and adjoining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

XII.  
All bills of credit emitted, monies borrowed, and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

XIII.  
Every State shall abide by the determination of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said Confederation are submitted to them. And that the Articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In Witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the Year of our Lord One Thousand Seven Hundred and Seventy-Eight, and in the Third Year of the independence of America.

Agreed to by Congress 15 November 1777
In force after ratification by Maryland, 1 March 1781

Signers and the states they represented:

**Connecticut**
Roger Sherman
Samuel Huntington
Oliver Wolcott
Titus Hosmer
Andrew Adams

**Delaware**
Thomas McKean
John Dickinson
Nicholas Van Dyke

**Georgia**
John Walton

Edward Telfair
Edward Langworthy
Maryland
John Hanson
Daniel Carroll
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<tr>
<th>State</th>
<th>Signers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Massachusetts Bay</td>
<td>William Duer, Gouverneur Morris</td>
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<td></td>
<td>John Hancock, Samuel Adams, Elbridge Gerry,</td>
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<td>Francis Dana, James Lovell, Samuel Holten</td>
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<td>New Jersey</td>
<td>John Witherspoon, Nathaniel Scudder</td>
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<td>New York</td>
<td>James Duane, Francis Lewis</td>
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<td>Josiah Bartlett, John Wentworth Jr.</td>
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<td>John Witherspoon, Nathaniel Scudder</td>
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<td></td>
<td>James Duane, Francis Lewis</td>
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<tr>
<td>Rhode Island and Providence Plantations</td>
<td>William Ellery, Henry Marchant, John Collins</td>
</tr>
<tr>
<td>South Carolina</td>
<td>John Penn, Cornelius Harnett, John Williams</td>
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<td>John Penn, Cornelius Harnett, John Williams</td>
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<tr>
<td>Virginia</td>
<td>Robert Morris, Daniel Roberdeau, Jonathan Bayard Smith, William Clingan, Joseph Reed</td>
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<td></td>
<td>Richard Henry Lee, John Banister, Thomas Adams,</td>
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<td>John Harvie, Francis Lightfoot Lee</td>
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Handout B: Evaluation of the Articles of Confederation

**Background:** Under the Articles of Confederation each state was sovereign in a “firm league of friendship,” agreeing to cooperate with the other states for purposes of common defense and general welfare. Congress was very limited in its powers. For example, Congress could print money but had no power to tax or enforce its policies or trade agreements. Each state retained its “sovereignty, freedom, and independence.” Disputes quickly arose among the states regarding such topics as conflicting claims over western lands, the value of paper money printed in each state, and trade agreements among states. New York charged a fee on boats traveling to and from Connecticut and New Jersey. New Jersey imposed a tax on a New York-owned lighthouse situated within New Jersey. New Jersey’s imports were heavily taxed if they had passed through New York City or Philadelphia. Spain and Great Britain took advantage of the weaknesses. Spain closed the port of New Orleans to American farmers, and Britain refused to remove troops from the Ohio River Valley after the Revolutionary War. George Washington wrote despairingly of such problems in a 1785 letter to James Warren. Handout C is the invitation sent by the Virginia Assembly to the meeting to be held in Annapolis.

George Washington to James Warren, Oct. 7, 1785

The war, as you have very justly observed, has terminated most advantageously for America, and a fair field is presented to our view; but I confess to you freely, My Dr. Sir, that I do not think we possess wisdom or Justice enough to cultivate it properly. Illiberality, Jealousy, and local policy mix too much in all our public councils for the good government of the Union. In a word, the confederation appears to me to be little more than a shadow without the substance; and Congress a nugatory [trivial, inconsequential] body, their ordinances being little attended to...

[W]e have abundant reason to be convinced, that the spirit for Trade which pervades these States is not to be restrained; it behooves us then to establish just principles; and this, any more than other matters of national concern, cannot be done by thirteen heads differently constructed and organized. The necessity, therefore, of a controlling power is obvious; and why it should be withheld is beyond my comprehension...

1. Restate the passage above in your own words.
Handout C: Resolution of the General Assembly of Virginia, January 21, 1786

PROPOSING A JOINT MEETING OF COMMISSIONERS FROM THE STATES TO CONSIDER AND RECOMMEND A FEDERAL PLAN FOR REGULATING COMMERCE

Background: In March of 1785, five delegates — Samuel Chase, Daniel of St. Thomas Jenifer, and Thomas Stone of Maryland and Alexander Henderson and George Mason of Virginia — had met at George Washington’s home, Mount Vernon. Their objective was to discuss commercial issues affecting their shared border, the Potomac River and Chesapeake Bay. In this meeting, called the Mount Vernon Conference, they reached an agreement that was later ratified by both state legislatures. On the heels of this successful effort, the Virginia legislature issued a call (shown below) for all states to send delegates to a similar commercial conference to be held the following year in Annapolis, Maryland. That 1786 meeting became known as the Annapolis Convention.

A motion was made, that the House do come to the following resolution:

Resolved, That Edmund Randolph, James Madison, Walter Jones, Saint George Tucker and Meriwether Smith, Esquires, be appointed commissioners, who, or any three of whom, shall meet such commissioners as may be appointed by the other States in the Union, at a time and place to be agreed on, to take into consideration the trade of the United States; to examine the relative situations and trade of the said States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States, such an act relative to this great object, as, when unanimously ratified by them, will enable the United States in Congress, effectually to provide for the same.

Critical Thinking Questions

1. According to the invitation from the Virginia Assembly, what were the goals of the upcoming meeting?

2. Under what conditions would any agreement reached in the Annapolis Convention take effect?
Handout D: Excerpts from the Introduction to Annapolis Convention Report by James Madison

**Background:** Though the General Assembly of Virginia invited all states to send delegates to a convention to be held in Annapolis, Maryland in September, 1786, only five of the 13 states did so. The formal name of the gathering was Meeting of Commissioners to Remedy Defects of the Federal Government, and James Madison wrote an introduction for the post-meeting report. The states represented, and their delegates were:

- New York: Egbert Benson and Alexander Hamilton
- New Jersey: Abraham Clark, William Houston, and James Schureman
- Pennsylvania: Tench Coxe
- Delaware: George Read, John Dickinson, and Richard Bassett
- Virginia: Edmund Randolph, James Madison, Jr., and St. George Tucker

Having witnessed, as a member of the Revolutionary Congress, the inadequacies of the powers conferred by the "Articles of Confederation," and having become, after the expiration of my term of service there, a member of the Legislature of Virginia, I felt it to be my duty to spare no efforts to impress on that body the alarming condition of the United States proceeding from that cause, and the evils threatened by delay, in applying a remedy. With this, propositions were made vesting in Congress the necessary powers to regulate trade, then suffering under the monopolizing power abroad, and State collisions at home... The propositions, though received with favorable attention, and at one moment agreed to in a crippled form, were finally frustrated, or, rather, abandoned. ...The proposition invited the other states to concur with Virginia in a convention of deputies commissioned to devise and report a uniform system of commercial regulations. ...The convention proposed took place at Annapolis, in August, 1786. Being, however, very partially attended...they determined to waive the object for which they were appointed, and recommend a convention, with enlarged powers, to be held the year following, in the city of Philadelphia. The Legislature of Virginia happened to be the first that acted on the recommendation, and being a member [of the Virginia Legislature], the only one of the attending commissioners at Annapolis who was so, my best exertions were used in promoting a compliance with it...

**Critical Thinking Questions**

1. What positions of public service did James Madison list in identifying his own background knowledge leading up to the Annapolis Convention? How did these positions help him understand the problems of the Articles of Confederation?

2. What was the stated objective of the Annapolis Convention?

3. Why did the delegates not address that objective?

4. What did the Annapolis Convention recommend?

To the Honorable, The Legislatures of Virginia, Delaware, Pennsylvania, New Jersey, and New York - assembled at Annapolis, humbly beg leave to report...

Deeply impressed...with the magnitude and importance of the object confided to them on this occasion, your Commissioners cannot forbear to indulge an expression of their earnest and unanimous wish, that speedy measures be taken, to effect a general meeting, of the States, in a future Convention, for the same, and such other purposes, as the situation of public affairs may be found to require.

That there are important defects in the system of the Federal Government is acknowledged by the Acts of all those States, which have concurred in the present Meeting; That the defects, upon a closer examination, may be found greater and more numerous, than even these acts imply, is at least so far probably, from the embarrassments which characterize the present State of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some mode, which will unite the Sentiments and Councils of all the States. In the choice of the mode, your Commissioners are of opinion, that a Convention of Deputies from the different States, for the special and sole purpose of entering into this investigation, and digesting a plan for supplying such defects as may be discovered to exist, will be entitled to a preference from considerations, which will occur without being particularized.

Your Commissioners decline an enumeration of those national circumstances on which their opinion respecting the propriety of a future Convention, with more enlarged powers, is founded; as it would be a useless intrusion of facts and observations, most of which have been frequently the subject of public discussion, and none of which can have escaped the penetration of those to whom they would in this instance be addressed. They are, however, of a nature so serious, as, in the view of your Commissioners, to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the Confederacy.

Under this impression, Your Commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction that it may essentially tend to advance the interests of the union if the States, by whom they have been respectively delegated, would themselves concur, and use their endeavors to procure the concurrence of the other States, in the appointment of Commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union; and to report such an Act for that purpose to the United States in Congress assembled, as when agreed to, by them, and afterwards confirmed by the Legislatures of every State, will effectually provide for the same...
Critical Thinking Questions

1. Summarize these excerpts in your own words.

2. What evidence do you see in the wording of this report that its authors considered correcting the flaws of the confederacy to be an urgent matter?
Handout F: Articles of Confederation One-Pager

Directions:

1. Work with your partners to list at least 3 or 4 of the main purposes of government.
   ____________________________________  ____________________________________
   ____________________________________  ____________________________________

2. Next, review this summary of the government under the Articles of Confederation.

The political leaders of the thirteen states, coming from what they perceived as the tyranny of Great Britain, were determined to create, not just a new government, but a new form of government. They attempted to embody the principles set forth in the Declaration of Independence in a government that could not violate the rights of the people. Though there was no government at the time which did so, the colonists were determined to build a system of government based on consent of the governed, which provided for the protection of natural rights, the limitations of a written constitution, and the supremacy of the legislature.

Members of Congress worked from 1776 to 1777 to produce a plan for such a government, and it took the states about four more years of debate before all of them approved it. In 1781, the same year as the last major battle of the American Revolution, the Articles of Confederation became the first national government of the United States of America. In this constitution, the states made sure they could control the national government, acting on their fear of a central government that could abuse its powers and trample upon the rights of the people.
Under the Articles of Confederation, the Confederation Congress

**Could:**
- Make peace
- Declare war
- Coin money
- Deal with the Indians
- Run the post office
- Make agreements with foreign nations

**Could not:**
- Levy taxes
- Regulate commerce among states
- Support an army
- Settle disputes among the states
- Force citizens to pay debts
- Force state governments to honor agreements with foreign governments

Under the Articles of Confederation, there was no executive branch and no national judicial system. Each state had one vote in the Confederation Congress, and nine of the thirteen states had to agree before any law could be passed. The main achievements of the government under this constitution were negotiating a favorable peace settlement to end the Revolutionary War, and organizing the orderly settlement of the Northwest Territory between the Ohio River and the Great Lakes.

3. To what extent could the Confederation Congress carry out the functions you listed at the beginning of this lesson (#1 above)? ________________________________
Handout G: Shays’s Rebellion Participants and Locations

**Directions:** Use this page to identify the parts that you and your classmates will play in the reenactment of Shays’s Rebellion. Some parts may be shared in order to allow for participation by all your class members. Rules for role play: 1. No injuries, 2. No inappropriate language, 3. Have fun improvising dialogue and simple props (nothing purchased) in order to understand these historical events in an educational context.

Tax Collector: Mr. Collector (one or more)

Foreclosed Farmer: Mr. Farmer

Foreclosed Farmer Family: Mrs. Farmer, Children

Banker: Mr. Banker

Judge: Your Honor

Sheriff: Mr. Sheriff and Deputies

Daniel Shays

Guards at Springfield arsenal (two or more)

Massachusetts Governor: James Bowdoin

Massachusetts Militia: multiple part-time soldiers

General Benjamin Lincoln and multiple soldiers of private army

Angry Farmers (ex-Revolutionary War soldiers and officers)

Narrator

Use this space to designate an area in the classroom to represent each of the following locations:

- Foreclosed farmer’s house
- Courthouse
- Jail
- Springfield Arsenal
- Massachusetts Governor James Bowdoin’s office
Handout H: Role Play Outline

**Directions:** Use this skeleton plan under your teacher’s direction to meet with the appropriate “cast members” and rehearse each scene of the reenactment. Your task is to portray these historical events so that both participants and observers will understand the events and significance of Shays’s Rebellion. You will have a brief time to work with your class members in each scene and ask your teacher for help as needed. Then you will reenact the rebellion (remember the expectations for appropriate conduct in your classroom!) and answer some questions to follow. Narrator will provide any necessary transitional explanations from scene to scene, and will lead the questions at the end of the role play outline.

**SCENE ONE: Farmer’s house, November, 1786**

*Tax collector* knocks on *Mr. Farmer’s* door. *Farmer and Wife* explain that they are unable to pay taxes because the farm was not profitable during the war years while the farmer was away serving his country in the Revolutionary War against Britain. Besides, the family is in debt to the bank for equipment and supplies purchased on credit before the Revolution. *Tax collector* advises farmer to sell something to raise enough money to pay taxes, or he faces foreclosure. After the tax collector leaves, *Farmer and Wife*, at kitchen table, struggle to think of a way to pay their debts and taxes. They talk about the fact that they have always been honorable people, and would pay their bills if they could think of a way. But the only things of value that they have are their house, farm, and the equipment they still owe money on. If they sold or lost these items, how would they support themselves? Besides, most of their neighbors are in the same situation. It does not seem fair that hard working, honorable people who have fought for their country and won independence would face such a sad situation. The farmer was not even paid for his years of service in the Revolutionary Army, because General Washington could not raise enough money to do so. *Children* whine from fear and hunger.

**SCENE TWO: Farmer’s house, two weeks later**

*Tax collector* returns to farmer’s house, this time with *Mr. Sheriff*. *Tax collector* gives the farmer another chance to pay taxes, but when he cannot, *Mr. Sheriff* escorts *Mr. Farmer* into town. *Children* whine from fear and hunger. *Wife* is desperate and hopeless; tries to be strong.

**SCENE THREE: Inside the courthouse**

*Judge* presides over foreclosure hearing for farmer. *Mr. Farmer* explains why he is unable to pay debts and taxes, lists the items he has sold trying to raise the money, including such possessions as furniture, livestock, and farm equipment. How can the family carry on without the necessary tools?
of farming? How can he plow the stony fields if his team of oxen is sold to pay debts and taxes? 

Mr. Banker testifies that the depositors in his bank, also hard working people in the community, expect their money to be safe. When people like the Farmer family do not pay their debts, the bank cannot continue to operate. Mr. Banker, a long time friend of the Farmers and people like them, is sympathetic, but the rights of property owners and lenders must take precedence over debtors who cannot pay.

Before he renders judgment, His (or Her) Honor delivers a brief speech describing disapproval of laws written by some state legislatures. These laws cancel the debts of people like Mr. Farmer and provide for the issuance of inflated paper money. While these laws are popular with the majority in those states, because they benefit anyone who owes money, they spell disaster for the overall economic system and make it impossible for the businessman to stay afloat. His Honor, like Mr. Banker, is sympathetic to the Farmer family. After all, their fathers helped build each other’s barns. Nevertheless, the justice system must not be swayed by sympathy, and must send the message that debts must be paid. Therefore, His Honor orders the Farmers’ place sold for payment of back taxes and other debts. And to make the message to the community very clear, the Judge orders Mr. Farmer to jail. Children whine from hunger and fear. Mrs. Farmer, hopeless, tries to be strong, and vows to keep the family together somehow until her husband is released and returns to support them. Mr. Sheriff escorts Mr. Farmer to jail.

SCENE FOUR: Outside the courthouse

Angry Farmers of the community who are also Revolutionary veterans, brave men who have served their country faithfully, hear of the judge’s decision, and angrily storm the front door of the courthouse. They know it is only a matter of time until their inability to pay their debts may lead to the same result. His Honor, hearing the riot, barely escapes out the back door, afraid for his life. A group of the farmers remains at the courthouse, preventing the judge from returning.

SCENE FIVE: Beginning near the courthouse, ending at the arsenal

Daniel Shays meets with some of the farmers and the group decides that they need to lay siege to Boston and force the Massachusetts legislature to write laws similar to those described by the judge, canceling debts. Then the money-grubbing leeches will no longer be able to persecute hardworking veterans and take away the fathers of little children! But before they can take control of the statehouse, they must have weapons. Therefore, brandishing pitchforks and shovels, they threaten to take over the arsenal at Springfield. The guards at the arsenal somehow hold out against the poorly armed mob, and notify Massachusetts Governor James Bowdoin of the trouble.

SCENE SIX: Governor Bowdoin’s Office

Governor Bowdoin responds to try to restore order, and asks the Continental Congress to send in troops. However, the Continental Congress can raise neither troops nor money. He then turns to the Massachusetts Militia. He finds, however, that the Massachusetts militia is not functioning;
most of them are debt-ridden farmer/veterans. In desperation, he collects private funds and rounds up a **private army** under the command of **General Benjamin Lincoln**, which finally marches on Springfield in February, 1787. The soldiers fire a few shots and three people are killed. The soldiers disperse the rebels, who flee to nearby states, or the independent republic of Vermont. In April of 1787, **Daniel Shays** and several of his men are tried for treason, and sentenced to hang for their crimes. However, they are eventually pardoned.

**SCENE SEVEN: Review**

**Narrator**—Let us review the events of Shays’s Rebellion. Each cast member will tell who he/she was, the actions he/she took, and why.
Handout I: Analysis of Shays’s Rebellion

Directions: Discuss the passages below in light of Shays’s Rebellion and answer the questions that follow.

The Preamble of the Constitution of the United States of America, 1787

We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution of the United States of America.

Discuss: To what extent was any level of the government (national, state, or local) of 1786-87 able to carry out the functions for which government is established? To what extent were purpose(s) of government listed in the Preamble threatened by anarchy during this period? Some historians maintain that Shays’s Rebellion and similar uprisings in other areas were really not serious threats to the social order, but that the Constitution’s Framers simply seized on these frightening incidents as a pretext for creating a stronger national government whose main purpose was to protect commercial interests. To what extent do you think Shays’s Rebellion influenced the Framers at the Philadelphia Convention in 1787?

Thomas Jefferson’s Comments on Shays’s Rebellion

“I hold it, that a little rebellion, now and then, is a good thing, and as necessary in the political world as storms are in the physical... It is a medicine necessary for the sound health of government.” Thomas Jefferson, in a letter to James Madison, Jan., 1787

“The tree of liberty must be refreshed from time to time, with the blood of patriots and tyrants. It is its natural manure.” Thomas Jefferson, in a letter to Wm. Stephens Smith, Nov., 1787

Discuss: How might Jefferson’s opinion have been affected by the fact that he was living in Paris at the time of Shays’s Rebellion?

Excerpt from Federalist No. 51, James Madison, Feb. 6, 1788

“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”

Discuss: In what ways can this famous passage from Federalist No. 51 be related to Shays’s Rebellion?
Shays’s Rebellion Role Play attribution


Note: for further reading, see The Shays’s Rebellion Website:
http://shaysrebellion.stcc.edu/shaysapp/about/project.jsp
Handout J: Main Headings from the *Vices of the Political System of the United States*

**Background:** In April of 1787, James Madison detailed the problems resulting from the system of government established by the Articles of Confederation. Here are Madison’s main headings.

1. Failure of the States to comply with the Constitutional requisitions.
2. Encroachments by the States on the federal authority.
3. Violations of the law of nations and of treaties.
4. Trespasses of the States on the rights of each other.
5. Want of concert in matters where common interest requires it.
6. Want of Guaranty to the States of their Constitutions & laws against internal violence.
7. Want of sanction to the laws, and of coercion in the Government of the Confederacy.
8. Want of ratification by the people of the articles of Confederation.
9. Multiplicity of laws in the several States.
11. Injustice of the laws of States.
12. Impotence of the laws of the States.

**Critical Thinking Question**

1. Based on a quick overview of this list from Madison, and on your background knowledge of the functioning of the government under the Articles of Confederation, which 3 to 5 problems do you think were the most serious and important? Be prepared to discuss your reasoning with others.
Handout K: Vices of the Political System of the United States, Full Text

**Background:** In this document, Madison provided his analysis of the problems that the union faced under the Articles of Confederation.

1. Failure of the States to comply with the Constitutional requisitions.

This evil has been so fully experienced both during the war and since the peace, results so naturally from the number and independent authority of the States and has been so uniformly exemplified in every similar Confederacy, that it may be considered as not less radically and permanently inherent in, than it is fatal to the object of, the present System.

2. Encroachments by the States on the federal authority.

Examples of this are numerous and repetitions may be foreseen in almost every case where any favorite object of a State shall present a temptation. Among these examples are the wars and Treaties of Georgia with the Indians–The unlicensed compacts between Virginia and Maryland, and between Pena. & N. Jersey–the troops raised and to be kept up by Massts.

3. Violations of the law of nations and of treaties.

From the number of Legislatures, the sphere of life from which most of their members are taken, and the circumstances under which their legislative business is carried on, irregularities of this kind must frequently happen. Accordingly not a year has passed without instances of them in some one or other of the States. The Treaty of peace–the treaty with France–the treaty with Holland have each been violated. [See the complaints to Congress on these subjects]. The causes of these irregularities must necessarily produce frequent violations of the law of nations in other respects.

As yet foreign powers have not been rigorous in animadverting on us. This moderation however cannot be mistaken for a permanent partiality to our faults, or a permanent security agst. those disputes with other nations, which being among the greatest of public calamities, it ought to be least in the power of any part of the Community to bring on the whole.

4. Trespasses of the States on the rights of each other.

These are alarming symptoms, and may be daily apprehended as we are admonished by daily experience. See the law of Virginia restricting foreign vessels to certain ports–of Maryland in favor of vessels belonging to her own citizens–of N. York in favor of the same.

Paper money, instalments of debts, occlusion of Courts, making property a legal tender, may likewise be deemed aggressions on the rights of other States. As the Citizens of every State aggregately taken stand more or less in the relation of Creditors or debtors, to the Citizens of every other States, Acts of the debtor State in favor of debtors, affect the Creditor State, in the same manner, as they do its own citizens who are relatively creditors towards other citizens. This remark may be extended to foreign nations. If the exclusive regulation of the value and alloy of coin was properly delegated to the federal authority, the policy of it equally requires a controul on
the States in the cases above mentioned. It must have been meant 1. to preserve uniformity in the circulating medium throughout the nation. 2. to prevent those frauds on the citizens of other States, and the subjects of foreign powers, which might disturb the tranquility at home, or involve the Union in foreign contests.

The practice of many States in restricting the commercial intercourse with other States, and putting their productions and manufactures on the same footing with those of foreign nations, though not contrary to the federal articles, is certainly adverse to the spirit of the Union, and tends to beget retaliating regulations, not less expensive & vexatious in themselves, than they are destructive of the general harmony.

5. want of concert in matters where common interest requires it.

This defect is strongly illustrated in the state of our commercial affairs. How much has the national dignity, interest, and revenue suffered from this cause? Instances of inferior moment are the want of uniformity in the laws concerning naturalization & literary property; of provision for national seminaries, for grants of incorporation for national purposes, for canals and other works of general utility, wch. may at present be defeated by the perverseness of particular States whose concurrence is necessary.

6. want of Guaranty to the States of their Constitutions & laws against internal violence.

The confederation is silent on this point and therefore by the second article the hands of the federal authority are tied. According to Republican Theory, Right and power being both vested in the majority, are held to be synonymous. According to fact and experience a minority may in an appeal to force, be an overmatch for the majority. 1. If the minority happen to include all such as possess the skill and habits of military life, & such as possess the great pecuniary resources, one third only may conquer the remaining two thirds. 2. One third of those who participate in the choice of the rulers, may be rendered a majority by the accession of those whose poverty excludes them from a right of suffrage, and who for obvious reasons will be more likely to join the standard of sedition than that of the established Government. 3. Where slavery exists the republican Theory becomes still more fallacious.

7. want of sanction to the laws, and of coercion in the Government of the Confederacy.

A sanction is essential to the idea of law, as coercion is to that of Government. The federal system being destitute of both, wants the great vital principles of a Political Constitution. Under the form of such a Constitution, it is in fact nothing more than a treaty of amity of commerce and of alliance, between so many independent and Sovereign States. From what cause could so fatal an omission have happened in the articles of Confederation? from a mistaken confidence that the justice, the good faith, the honor, the sound policy, of the several legislative assemblies would render superfluous any appeal to the ordinary motives by which the laws secure the obedience of individuals: a confidence which does honor to the enthusiastic virtue of the compilers, as much as the inexperience of the crisis apologizes for their errors. The time which has since elapsed has had the double effect, of increasing the light and tempering the warmth, with which the arduous work may be revised. It is no longer doubted that a unanimous and punctual obedience of 13 independent bodies, to the acts of the federal Government, ought not be calculated on. Even during the war, when external danger supplied in some degree the defect of legal & coercive sanctions, how imperfectly did the States fulfil their obligations to the Union? In time of peace, we see already what is to be expected. How
indeed could it be otherwise? In the first place, Every general act of the Union must necessarily bear unequally hard on some particular member or members of it. Secondly the partiality of the members to their own interests and rights, a partiality which will be fostered by the Courtiers of popularity, will naturally exaggerate the inequality where it exists, and even suspect it where it has no existence. Thirdly a distrust of the voluntary compliance of each other may prevent the compliance of any, although it should be the latent disposition of all. Here are causes & pretexts which will never fail to render federal measures abortive. If the laws of the States, were merely recommendatory to their citizens, or if they were to be rejudged by County authorities, what security, what probability would exist, that they would be carried into execution? Is the security or probability greater in favor of the acts of Congs. which depending for their execution on the will of the state legislatures, wch. are tho’ nominally authoritative, in fact recommendatory only.

8. Want of ratification by the people of the articles of Confederation.

In some of the States the Confederation is recognized by, and forms a part of the constitution. In others however it has received no other sanction than that of the Legislative authority. From this defect two evils result: 1. Whenever a law of a State happens to be repugnant to an act of Congress, particularly when the latter is of posterior date to the former, it will be at least questionable whether the latter must not prevail; and as the question must be decided by the Tribunals of the State, they will be most likely to lean on the side of the State.

2. As far as the Union of the States is to be regarded as a league of sovereign powers, and not as a political Constitution by virtue of which they are become one sovereign power, so far it seems to follow from the doctrine of compacts, that a breach of any of the articles of the confederation by any of the parties to it, absolves the other parties from their respective obligations, and gives them a right if they chuse to exert it, of dissolving the Union altogether.

9. Multiplicity of laws in the several States.

In developing the evils which viciate the political system of the U. S. it is proper to include those which are found within the States individually, as well as those which directly affect the States collectively, since the former class have an indirect influence on the general malady and must not be overlooked in forming a compleat remedy. Among the evils then of our situation may well be ranked the multiplicity of laws from which no State is exempt. As far as laws are necessary, to mark with precision the duties of those who are to obey them, and to take from those who are to administer them a discretion, which might be abused, their number is the price of liberty. As far as the laws exceed this limit, they are a nuisance: a nuisance of the most pestilent kind. Try the Codes of the several States by this test, and what a luxuriancy of legislation do they present. The short period of independency has filled as many pages as the century which preceded it. Every year, almost every session, adds a new volume. This may be the effect in part, but it can only be in part, of the situation in which the revolution has placed us. A review of the several codes will shew that every necessary and useful part of the least voluminous of them might be compressed into one tenth of the compass, and at the same time be rendered tenfold as perspicuous.

10. mutability of the laws of the States.

This evil is intimately connected with the former yet deserves a distinct notice as it emphatically denotes a vicious legislation. We daily see laws repealed or superseded, before any trial can have
been made of their merits: and even before a
knowledge of them can have reached the remoter
districts within which they were to operate. In
the regulations of trade this instability becomes
a snare not only to our citizens but to foreigners
also.

11. Injustice of the laws of States.
If the multiplicity and mutability of laws prove a
want of wisdom, their injustice betrays a defect
still more alarming: more alarming not merely
because it is a greater evil in itself, but because
it brings more into question the fundamental
principle of republican Government, that the
majority who rule in such Governments, are
the safest Guardians both of public Good and of
private rights. To what causes is this evil to be
ascribed?

These causes lie 1. in the Representative bodies.
2. in the people themselves.

1. Representative appointments are sought from 3
 motives. 1. ambition 2. personal interest.
3. public good. Unhappily the two first are proved
by experience to be most prevalent. Hence
the candidates who feel them, particularly,
the second, are most industrious, and most
successful in pursuing their object: and forming
often a majority in the legislative Councils, with
interested views, contrary to the interest, and
views, of their Constituents, join in a perfidious
sacrifice of the latter to the former. A succeeding
election it might be supposed, would displace the
offenders, and repair the mischief. But how easily
are base and selfish measures, masked by pretexts
of public good and apparent expediency? How
frequently will a repetition of the same arts and
industry which succeeded in the first instance,
again prevail on the unwary to misplace their
confidence?

How frequently too will the honest but
unenlightened representative be the dupe of a
favorite leader, veiling his selfish views under the
professions of public good, and varnishing his
sophistical arguments with the glowing colours of
popular eloquence?

2. A still more fatal if not more frequent cause
lies among the people themselves. All civilized
societies are divided into different interests
and factions, as they happen to be creditors or
debtors—Rich or poor—husbandmen, merchants
or manufacturers—members of different religious
sects—followers of different political leaders—
inhabitants of different districts—owners of
different kinds of property &c &c. In republican
Government the majority however composed,
ultimately give the law. Whenever therefore an
apparent interest or common passion unites a
majority what is to restrain them from unjust
violations of the rights and interests of the
minority, or of individuals? Three motives
only 1. a prudent regard to their own good as
involved in the general and permanent good of
the Community. This consideration although of
decisive weight in itself, is found by experience to
be too often unheeded. It is too often forgotten,
by nations as well as by individuals that honesty
is the best policy. 2dly. respect for character.
However strong this motive may be in individuals,
it is considered as very insufficient to restrain
them from injustice. In a multitude its efficacy is
diminished in proportion to the number which
is to share the praise or the blame. Besides, as it
has reference to public opinion, which within a
particular Society, is the opinion of the majority,
the standard is fixed by those whose conduct is to
be measured by it. The public opinion without the
Society, will be little respected by the people at
large of any Country.

Individuals of extended views, and of national
pride, may bring the public proceedings to this
standard, but the example will never be followed
by the multitude. Is it to be imagined that an
ordinary citizen or even an assembly-man of R. Island in estimating the policy of paper money, ever considered or cared in what light the measure would be viewed in France or Holland; or even in Masst. or Connect.? It was a sufficient temptation to both that it was for their interest: it was a sufficient sanction to the latter that it was popular in the State; to the former that it was so in the neighbourhood. 3dly. will Religion the only remaining motive be a sufficient restraint? It is not pretended to be such on men individually considered. Will its effect be greater on them considered in an aggregate view? quite the reverse. The conduct of every popular assembly acting on oath, the strongest of religious Ties, proves that individuals join without remorse in acts, against which their consciences would revolt if proposed to them under the like sanction, separately in their closets. When indeed Religion is kindled into enthusiasm, its force like that of other passions, is increased by the sympathy of a multitude. But enthusiasm is only a temporary state of religion, and while it lasts will hardly be seen with pleasure at the helm of Government. Besides as religion in its coolest state, is not infallible, it may become a motive to oppression as well as a restraint from injustice. Place three individuals in a situation wherein the interest of each depends on the voice of the others, and give to two of them an interest opposed to the rights of the third? Will the latter be secure? The prudence of every man would shun the danger. The rules & forms of justice suppose & guard against it. Will two thousand in a like situation be less likely to encroach on the rights of one thousand? The contrary is witnessed by the notorious factions & oppressions which take place in corporate towns limited as the opportunities are, and in little republics when uncontrouled by apprehensions of external danger. If an enlargement of the sphere is found to lessen the insecurity of private rights, it is not because the impulse of a common interest or passion is less predominant in this case with the majority; but because a common interest or passion is less apt to be felt and the requisite combinations less easy to be formed by a great than by a small number. The Society becomes broken into a greater variety of interests, of pursuits, of passions, which check each other, whilst those who may feel a common sentiment have less opportunity of communication and concert. It may be inferred that the inconveniences of popular States contrary to the prevailing Theory, are in proportion not to the extent, but to the narrowness of their limits.

The great desideratum in Government is such a modification of the Sovereignty as will render it sufficiently neutral between the different interests and factions, to controul one part of the Society from invading the rights of another, and at the same time sufficiently controuled itself, from setting up an interest adverse to that of the whole Society. In absolute Monarchies, the prince is sufficiently, neutral towards his subjects, but frequently sacrifices their happiness to his ambition or his avarice. In small Republics, the sovereign will is sufficiently controuled from such a Sacrifice of the entire Society, but is not sufficiently neutral towards the parts composing it. As a limited Monarchy tempers the evils of an absolute one; so an extensive Republic meliorates the administration of a small Republic.

An auxiliary desideratum for the melioration of the Republican form is such a process of elections as will most certainly extract from the mass of the Society the purest and noblest characters which it contains; such as will at once feel most strongly the proper motives to pursue the end of their appointment, and be most capable to devise the proper means of attaining it.
Critical Thinking Questions

1. To what “Political System” did Madison refer?

2. Summarize Madison’s thoughts on what makes for a good law.

3. Summarize the following passage in your own words.

   “If the multiplicity and mutability of laws prove a want of wisdom, their injustice betrays a defect still more alarming: more alarming not merely because it is a greater evil in itself, but because it brings more into question the fundamental principle of republican Government, that the majority who rule in such Governments, are the safest Guardians both of public Good and of private rights. To what causes is this evil to be ascribed?

   “These causes lie 1. in the Representative bodies. 2. in the people themselves.”

4. What is the fundamental principle of republican government, and why is a system that calls that principle into question especially dangerous?

5. List some similarities between this document and Federalist No. 10.

6. Do you agree with Madison that differing interpretations of the Constitution make political parties inevitable? What other factors help determine party differences today?

7. According to James Madison, what political problems was the Constitution intended to solve? What are its solutions? What problems might it also pose in its own right?
Handout A: The U.S. Constitution of 1787

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

The Legislative Branch

Bicameral (two-house)
Congress

Election of Representatives

Article I

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one,
Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

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

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

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.
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<tr>
<th><strong>Elections and assembly of Congress</strong></th>
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<tr>
<td>Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.</td>
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<td><strong>Section 4.</strong> The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.</td>
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<td>The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.</td>
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<th><strong>Responsibilities of each house of Congress</strong></th>
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<td><strong>Section 5.</strong> Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.</td>
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<td>Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.</td>
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<td>Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.</td>
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<tr>
<td>Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.</td>
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<th><strong>Protections for Congress</strong></th>
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<td><strong>Section 6.</strong> The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the...</td>
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same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time: and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the
common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto Law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present,
emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States,
directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor
Powers of the President

Section 2. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Communication with Congress and other responsibilities of the President

Section 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he...
Section 4. The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article III

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not
Definition of treason

Section 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainer of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Relationship among states

States accept laws and contracts of other states

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Admission of new states

Section 3. New states may be admitted by the Congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all
Protection of state governments

Constitutional amendments

Supremacy of the Constitution; No religious tests for federal office

needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Article V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive
and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

**Article VII**

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven and of the independence of the United States of America the twelfth. In witness whereof We have hereunto subscribed our Names,

**Signatures**

- **New York:** Alexander Hamilton
  - Delaw: James McHenry, Dan of St Thos. Jenifer, Danl Carroll

- **Virginia:**
  - New Jersey: Wil: Livingston, David Brearly, Wm. Paterson, Jona: Dayton
  - South Carolina: J. Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler
  - Georgia: William Few, Abr Baldwin

- **Massachusetts:** Nathaniel Gorham, Rufus King
- **Connecticut:** Wm: Saml. Johnson, Roger Sherman
Handout B: Executive Comparison

Background: Under the Articles of Confederation submitted to the states for ratification in 1777, there was no executive branch. The only reference to the office of president is a brief description in Article IX, the same article that lists the powers of Congress. This individual, a member of Congress, would preside over meetings of Congress and chair the Committee of the States (consisting of one delegate from each state) that met when Congress was in recess. He would perform some other administrative functions, but there were no clear guidelines or authorization — suggesting that these functions were expected to be very limited in their scope.

Article IX. The United States in Congress assembled shall have authority ... to appoint one of their members to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years.

Critical Thinking Questions

1. Given Americans’ recent colonial experience (1763 – 1776), why do you think this document did not provide for a strong chief executive?

2. Compare the brief description above to Article II of the U.S. Constitution of 1787 and note several important differences in the approach to the executive.

3. What experiences in the decade prior to 1787 may account for a different approach to the executive position?
Background: Though the Philadelphia Convention was scheduled to begin on May 14, 1787, only a small number of delegates had arrived by that date. James Madison worked during the succeeding days to draft what came to be called the Virginia Plan, consisting of 15 resolutions and calling for a bicameral legislature. By Friday, May 25, twenty-nine delegates representing 9 states had assembled. The delegates unanimously elected General Washington President of the Convention. By May 29, forty delegates were present, and the convention began its work in earnest, with the Virginia Plan largely forming the agenda. On June 23, the convention named a Committee of Detail to draw up a draft text showing the agreements that had been reached up until that time, and then the convention adjourned until August 6. When the Committee of Detail presented its report to the convention on August 6, it formed the first draft of the U.S. Constitution. The sections below show the proposals regarding the executive power.

August 6, Committee of Detail Report – Proposals for Executive

Sect. 1. The Executive Power of the United States shall be vested in a single person. His stile shall be, “The President of the United States of America;” and his title shall be, “His Excellency.” He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

Sect. 2. He shall, from time to time, give information to the Legislature, of the state of the Union: he may recommend to their consideration such measures as he shall judge necessary, and expedient: he may convene them on extraordinary occasions. In case of disagreement between the two Houses, with regard to the time of adjournment, he may adjourn them to such time as he thinks proper: he shall take care that the laws of the United States be duly and faithfully executed: he shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this Constitution. He shall receive Ambassadors, and may correspond with the supreme Executives of the several States. He shall have power to grant reprieves and pardons; but his pardon shall not be pleadable in bar of an impeachment. He shall be commander in chief of the Army and Navy of the United States, and of the Militia of the several States. He shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department, he shall take the following oath or affirmation, “I — solemnly swear, (or affirm) that I will faithfully execute the office of President of the United States of America.” He shall be removed from his office on impeachment by the House of Representatives, and conviction in the supreme Court, of treason, bribery, or corruption. In case of his removal as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties, until another President of the United States be chosen, or until the disability of the President be removed.
Directions: Use the table below to show differences in the description of the presidency in the August 6 report and that in Article II of the U.S. Constitution. If the two documents are essentially the same, just write “same” or “similar” in both cells.

<table>
<thead>
<tr>
<th>August 6 Committee of Detail Report</th>
<th>Article II, U.S. Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Single or plural executive</td>
<td></td>
</tr>
<tr>
<td>2. Term of office</td>
<td></td>
</tr>
<tr>
<td>3. Method of election</td>
<td></td>
</tr>
<tr>
<td>4. Re-election</td>
<td></td>
</tr>
<tr>
<td>5. State of the Union report</td>
<td></td>
</tr>
<tr>
<td>6. Responsibility to faithfully execute the law</td>
<td></td>
</tr>
<tr>
<td>7. Appointment of officials</td>
<td></td>
</tr>
<tr>
<td>8. Receiving ambassadors</td>
<td></td>
</tr>
<tr>
<td>9. Power to grant reprieves and pardons</td>
<td></td>
</tr>
<tr>
<td>10. Removal by impeachment</td>
<td></td>
</tr>
</tbody>
</table>
Handout D: Meeting the Framers—A Reunion Social in 1840

Directions:

1. Using such resources as the following websites, select a Framer to research.
   
   http://billofrightsinstitute.org/resources/educator-resources/founders
   http://www.archives.gov/exhibits/charters/constitution_founding_fathers_overview.html
   http://teachingamericanhistory.org/convention/delegates/bigpicture/

2. Each student will develop a “business card” (using a 3x5 inch card) to represent the character and main achievements of his/her Framer. Cards will be exchanged by Framers attending a “reunion” held in 1840. (Note: James Madison was the last of both Framers and the Founding Fathers; he died at age 85 at Montpelier in 1836. “Framers” are men who actually attended the Philadelphia Convention of 1787. The more general term, “ Founder,” is used to refer to men and women of influence at the time of the Founding of the United States of America.)

3. Turn in your copy-ready black and white cards at least 24 – 48 hours before the date of your scheduled reunion, to enable spot-checking and corrective feedback in the event of serious error. Once cards are satisfactory, your teacher will make sufficient copies of each card for everyone in the class.

4. On the scheduled date of the Reunion Social, (suggested date: September 17), each student will impersonate his/her Framer, exchange business cards, and mingle so that students will remember the character, achievements, and personalities of the Philadelphia Convention delegates. Conversations should reveal connections and relationships among the personalities. (Note: this lesson is especially memorable if it involves refreshments—students might volunteer to bring snacks that represent their Framers in some way.)
**Suggestions/Expectations for Business Card Information**

<table>
<thead>
<tr>
<th>Name</th>
<th>Historical Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address (Students may exercise creative license if necessary here)</td>
<td>Contributions during Constitutional Convention</td>
</tr>
<tr>
<td>Occupation</td>
<td>Most noteworthy characteristics/interesting facts</td>
</tr>
<tr>
<td>Significant affiliations or titles</td>
<td>Contributions after the Convention</td>
</tr>
<tr>
<td>Contributions during Revolutionary Era</td>
<td>Quotes</td>
</tr>
</tbody>
</table>

**Requirements**

**Appearance**

- ___ Neat, accurate, free from error
- ___ Size: 3x5 inches
- ___ Typed

**Content**

- ___ Documentation on the back (standard bibliography references, along with student’s standard heading)
- ___ Information above and beyond textbook references; demonstration of serious research
- ___ Creative, original presentation (may include graphics, slogans, etc.)
- ___ Overall effect enhances long-term learning

**Ratings**

5: Exemplary
4: Effective
3: Adequate
2: Minimal
1: Unsatisfactory
Handout E: Bundle of Compromises

Directions: The Constitution has often been called a “bundle of compromises.” To what extent and in what ways is this description accurate? On several important points it was necessary for the 1787 convention delegates to compromise in order to maintain the union of the states.

Using such resources as [http://teachingamericanhistory.org/convention/themes](http://teachingamericanhistory.org/convention/themes), and others as appropriate, summarize at least the following compromises in your response.

- Great Compromise
- Three-Fifths Compromise
- Commerce Compromise
- Slave Trade Compromise
- Election of the President
Handout F: James Madison and Federalism—Excerpts from *Federalist No. 39*

**Directions:** Using three highlighter pens, read the following passages from *Federalist No. 39* and discuss the questions below. Numbers in brackets show paragraph numbers from the complete essay, and all italics are Madison’s. Underlining is added to point out vocabulary words.

- Where Madison uses the term “national,” think “We the People,” and highlight those aspects blue.
- Where he uses the term “federal,” think, “We the States,” and highlight those aspects yellow.
- Where he says we have both federal and national influences, highlight in green.

1. **Ratification of the Constitution [10]**
   “[R]atification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong...The act, therefore, establishing the constitution, will not be a *national*, but a *federal* act.”

2. **The House of Representatives [12]**
   “[The House of Representatives] will derive its powers from the people of America; and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular state. So far the government is *national*, not *federal*.”

3. **The Senate [12]**
   “[The Senate] will derive its powers from the states, as political and co-equal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is *federal*, not *national*.”

4. **Government Power [14]**
   “The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government...[T]he proposed government cannot be deemed a *national* one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects...”
5. Amending the Constitution [15]

“[O]n the authority by which amendments are to be made, we find it neither wholly national nor wholly federal. Were it wholly national, the supreme and ultimate authority would reside in the majority of the people of the Union...Were it wholly federal on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all...In requiring more than a majority, and particularly in computing the proportion by States, not by citizens, it departs from the national and advances towards the federal character; in rendering the concurrence of less than the whole number of States sufficient, it loses again the federal and partakes of the national character...”

6. Summary [16]

“The proposed Constitution ... [is] neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national.”

Comprehension Questions

1. According to Madison, did the Constitution provide for a nation of people or a nation of states—or both? Explain.

2. To what extent was Alexander Hamilton on target in this statement: “This balance between the National and State governments ought to be dwelt on with peculiar attention, as it is of the utmost importance. It forms a double security to the people...Indeed, they will both be prevented from overpassing their constitutional limits by a certain rivalship, which will ever subsist between them.”
Handout G: Slavery and the Founders

**Background:** Slavery was legal in every state at the beginning of the American Revolution, but its impact on the economy of northern states was minimal. Founders in the North were, therefore, more likely to write publicly about the injustices of slavery and the inconsistency between republican ideals and the practice of enslaving human beings. However, even the slave-holding Founders were well aware of those injustices and inconsistencies. Virginians Jefferson, Washington, Madison, and Mason, all of whom wrote powerfully and carried out courageous actions on behalf of human liberty, and all of whom criticized slavery, were slave-holders.

**Directions:** Use this table as a reference when studying the Founders.

<table>
<thead>
<tr>
<th>Name</th>
<th>State</th>
<th>Attended Philadelphia Convention?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Richard Bassett</td>
<td>Delaware</td>
<td>Yes</td>
</tr>
<tr>
<td>John Dickinson</td>
<td>Delaware</td>
<td>Yes</td>
</tr>
<tr>
<td>George Read</td>
<td>Delaware</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Button Gwinnett</strong></td>
<td><strong>Georgia</strong></td>
<td><strong>No</strong></td>
</tr>
<tr>
<td>Charles Carroll</td>
<td>Maryland</td>
<td>No</td>
</tr>
<tr>
<td>Daniel Carroll</td>
<td>Maryland</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Samuel Chase</strong></td>
<td><strong>Maryland</strong></td>
<td><strong>No</strong></td>
</tr>
<tr>
<td>Daniel of St. Thomas Jenifer</td>
<td>Maryland</td>
<td>Yes</td>
</tr>
<tr>
<td>Luther Martin</td>
<td>Maryland</td>
<td>Yes</td>
</tr>
<tr>
<td>John F. Mercer</td>
<td>Maryland</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>John Hancock</strong></td>
<td><strong>Massachusetts</strong></td>
<td><strong>No</strong></td>
</tr>
<tr>
<td>John Jay</td>
<td><strong>New York</strong></td>
<td><strong>No</strong></td>
</tr>
<tr>
<td>Name</td>
<td>State</td>
<td>Attended Philadelphia Convention?</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>----------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>William Blount</td>
<td>North Carolina</td>
<td>Yes</td>
</tr>
<tr>
<td>William Davie</td>
<td>North Carolina</td>
<td>Yes</td>
</tr>
<tr>
<td>Alexander Martin</td>
<td>North Carolina</td>
<td>Yes</td>
</tr>
<tr>
<td>Richard Dobbs Spaight</td>
<td>North Carolina</td>
<td>Yes</td>
</tr>
<tr>
<td>Benjamin Franklin</td>
<td>Pennsylvania</td>
<td>Yes</td>
</tr>
<tr>
<td><em>Benjamin Rush</em></td>
<td>Pennsylvania</td>
<td><em>No</em></td>
</tr>
<tr>
<td>Pierce Butler</td>
<td>South Carolina</td>
<td>Yes</td>
</tr>
<tr>
<td>Charles Pinckney</td>
<td>South Carolina</td>
<td>Yes</td>
</tr>
<tr>
<td>Charles Cotesworth Pinckney</td>
<td>South Carolina</td>
<td>Yes</td>
</tr>
<tr>
<td><em>Edward Rutledge</em></td>
<td>South Carolina</td>
<td><em>No</em></td>
</tr>
<tr>
<td>John Rutledge</td>
<td>South Carolina</td>
<td>Yes</td>
</tr>
<tr>
<td>John Blair</td>
<td>Virginia</td>
<td>Yes</td>
</tr>
<tr>
<td><em>Patrick Henry</em></td>
<td>Virginia</td>
<td><em>No</em></td>
</tr>
<tr>
<td><em>Thomas Jefferson</em></td>
<td>Virginia</td>
<td><em>No</em></td>
</tr>
<tr>
<td><em>Richard Henry Lee</em></td>
<td>Virginia</td>
<td><em>No</em></td>
</tr>
<tr>
<td>James Madison</td>
<td>Virginia</td>
<td>Yes</td>
</tr>
<tr>
<td>George Mason</td>
<td>Virginia</td>
<td>Yes</td>
</tr>
<tr>
<td>Edmund Randolph</td>
<td>Virginia</td>
<td>Yes</td>
</tr>
<tr>
<td>George Washington</td>
<td>Virginia</td>
<td>Yes</td>
</tr>
<tr>
<td>George Wythe</td>
<td>Virginia</td>
<td>Yes</td>
</tr>
</tbody>
</table>

*All of those listed in the table owned slaves at some point in their lives*
Directions: Use the table provided to complete the map.
In each state or territory, write the date of a law providing for gradual emancipation in that state.
Next, use map pencils or markers to color code the map.
Yellow: abolished slavery outright
Green: gradual emancipation
Blue: abolished slavery with the 13th Amendment in 1865

Map courtesy Golbez, Wikimedia Commons.
**Directions:** Slavery was legal in all 13 colonies at the time of the Declaration of Independence in 1776. Use the table below to complete the map provided in order to show steps toward abolition of slavery. Prepare to discuss your observations and comparisons as your teacher directs.

Notes: For further reading, consult Douglas Harper, [http://slavenorth.com](http://slavenorth.com)

<table>
<thead>
<tr>
<th>Year of a law providing for emancipation</th>
<th>State</th>
<th>Year when the last remaining slaves either died or won their freedom</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1777</td>
<td>Republic of Vermont</td>
<td>1777</td>
<td>Vermont Republic's 1777 constitution abolished slavery outright. Vermont became the 14th state admitted to the Union in 1791.</td>
</tr>
<tr>
<td>1780</td>
<td>Pennsylvania</td>
<td>1840s or 1850s</td>
<td>According to Pennsylvania’s gradual emancipation law of 1780, all children born in Pennsylvania were free persons. Children born to slaves were required to work for their mothers’ master until age 28. Enslaved individuals living in Pennsylvania before 1780 remained enslaved for life.</td>
</tr>
<tr>
<td>1783</td>
<td>Massachusetts (including Maine)</td>
<td>1783</td>
<td>A 1783 judicial decision outlawed slavery, based on the Massachusetts 1780 constitution.</td>
</tr>
<tr>
<td>1783</td>
<td>New Hampshire</td>
<td>1857</td>
<td>New Hampshire's 1783 constitution, stating “all men are born equal and independent” was widely understood as a rejection of slavery. A law in 1857 stating, “No person because of descent, should be disqualified from becoming a citizen” prohibited slavery.</td>
</tr>
<tr>
<td>1784</td>
<td>Connecticut</td>
<td>1848</td>
<td>A law in 1784 provided that any child of slaves born after March 1 would become free at age 25; a 1797 law reduced that age to 21. Another law in 1848 abolished slavery.</td>
</tr>
<tr>
<td>1784</td>
<td>Rhode Island</td>
<td>1840s</td>
<td>All children of slaves born after March 1 were considered “apprentices.” Girls would become free at age 18, boys at age 21. The 1784 law did not infringe on the right of Rhode Island ship-owners to participate in the slave trade.</td>
</tr>
<tr>
<td>Year of a law providing for emancipation</td>
<td>State</td>
<td>Year when the last remaining slaves either died or won their freedom</td>
<td>Notes</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>-------</td>
<td>-------------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>1787</td>
<td>Northwest Territory</td>
<td>1787</td>
<td>Article 6 of the Northwest Ordinance provided: “There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: Provided, always, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.”</td>
</tr>
<tr>
<td>1799</td>
<td>New York</td>
<td>1827</td>
<td>A law in 1799 provided that all children of slaves born after July 4 would be free—girls at age 25 and boys at age 28, but until then they remained property of the mother’s master. Enslaved individuals living in New York before 1799 remained enslaved for life.</td>
</tr>
<tr>
<td>1804</td>
<td>New Jersey</td>
<td>1846</td>
<td>A law in 1804 provided that all children of slaves born after July 4 would be free—girls at age 21 and boys at age 25, but until then they remained property of the mother’s master. Enslaved individuals living in New Jersey before 1804 remained enslaved for life. An 1846 law abolished slavery permanently.</td>
</tr>
<tr>
<td>1863</td>
<td>West Virginia</td>
<td>1865</td>
<td>West Virginia joined the Union in 1863 as a slave state, but under the Willey Amendment, all children born to slaves after July 4, 1863, would be free. Slaves under age ten would be freed at the age of twenty-one and those between ten and twenty-one years of age would gain their freedom at the age of twenty-five. The amendment did not end the ownership of slaves entirely in West Virginia, but in February 1865, Governor Arthur I. Boreman signed an act officially freeing all slaves.</td>
</tr>
<tr>
<td>1865</td>
<td>Delaware</td>
<td>13th Amendment</td>
<td>13th Amendment to the U.S. Constitution: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”</td>
</tr>
<tr>
<td>1865</td>
<td>Georgia</td>
<td>13th Amendment</td>
<td></td>
</tr>
<tr>
<td>1865</td>
<td>Maryland</td>
<td>13th Amendment</td>
<td></td>
</tr>
<tr>
<td>Year of a law providing for emancipation</td>
<td>State</td>
<td>Year when the last remaining slaves either died or won their freedom</td>
<td>Notes</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>---------------------</td>
<td>---------------------------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>1865</td>
<td>North Carolina</td>
<td>13th Amendment</td>
<td></td>
</tr>
<tr>
<td>1865</td>
<td>South Carolina</td>
<td>13th Amendment</td>
<td></td>
</tr>
<tr>
<td>1865</td>
<td>Virginia</td>
<td>13th Amendment</td>
<td></td>
</tr>
</tbody>
</table>
Handout I: Founders’ Quotes on Slavery

Directions: As you read, note the arguments for and against slavery.

1. “He [the King] has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation hither. This piratical warfare, the opprobrium of infidel powers, is the warfare of the CHRISTIAN king of Great Britain. Determined to keep open a market where MEN should be bought and sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or restrain this execrable commerce…” – Thomas Jefferson, original draft of the Declaration of Independence, 1776

2. “There is not a man living who wishes more sincerely than I do, to see a plan adopted for the abolition of it.” – George Washington, 1786

3. “It is to be wished that slavery may be abolished. The honour of the States, as well as justice and humanity, in my opinion, loudly call upon them to emancipate these unhappy people. To contend for our own liberty, and to deny that blessing to others, involves an inconsistency not to be excused.” – John Jay, 1786

4. Article the Sixth. There shall be neither Slavery nor involuntary Servitude in the said territory otherwise than in the punishment of crimes, whereof the party shall have been duly convicted; Provided always, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid. – Northwest Ordinance, 1787

5. “We have seen the mere distinction of color made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man.” – James Madison, Constitutional Convention, June 6, 1787

6. “He [Gouverneur Morris] never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of heaven on the States where it prevailed…. Upon what principle is it that the slaves shall be computed in representation? Are they men? Then make them Citizens and let them vote. Are they property? Why is no other property included?...The admission of slaves into the Representation when fairly explained comes to this: that the inhabitant of Georgia and S.C. who goes to the Coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections and damns them to the most cruel bondages, shall have more votes in a Govt. instituted for the protection of the rights of mankind, than the Citizen of Pa. or N. Jersey who views with a laudable horror, so nefarious a practice.” – Gouverneur Morris
What arguments for and against slavery do you see in these quotes? Be prepared to discuss your evaluation of these arguments.

 Arguments For Slavery

 Arguments Against Slavery
Handout J: Readers’ Theater – Convention Debate on the Slave Trade

**Background:** Was the Constitution a pro-slavery document, or did its Framers intend to set slavery on the road to extinction? An examination of the Convention debate that took place on August 21-22, 1787, regarding the international slave trade, will help shed light on the question. This Readers’ Theater is adapted from Madison’s Notes from those dates and will bring the debate to life. Before the performance, students will need to adapt the script into first person. As they read, students should look for what themes emerge.

**Participants in order of their appearance**

1. Narrator
2. Luther Martin [MD]
3. John Rutledge [SC]
4. Oliver Ellsworth [CT]
5. Charles Pinckney [SC]
6. Roger Sherman [CT]
7. George Mason [VA]
8. General Charles Cotesworth Pinckney [SC]
9. Abraham Baldwin [GA]
10. James Wilson [PA]
11. Elbridge Gerry [MA]
12. John Dickinson [DE]
13. Hugh Williamson [NC]
14. Rufus King [MA]
15. John Langdon [NH]
16. Gouverneur Morris [PA]
17. Pierce Butler [SC]
18. George Read [DE]
19. Edmund Randolph [VA]

**Participants by state**

CT—Ellsworth, Sherman
DE—Dickinson, Read
GA—Baldwin
MA—Gerry, King
MD—Martin
NC—Williamson
NH—Langdon
PA—Wilson, G. Morris
SC—Rutledge, C. Pinckney, CC Pinckney, Butler
VA—Mason, Randolph
Narrator: Was the Constitution a pro-slavery document, or did its Framers intend to set slavery on the road to extinction? An examination of the Convention debate that took place on August 21-22, 1787, regarding the international slave trade, will help shed light on the question. This Readers’ Theater is adapted from Madison’s Notes from those dates and will bring the debate to life.

IN CONVENTION

Mr. Luther Martin [MD] proposed to vary Article 7, Section 4, which provides that the national government would not interfere with the international slave trade by the states. “No tax or duty shall be laid by the Legislature on articles exported from any State; nor on the migration or importation of such persons as the several States shall think proper to admit; nor shall such migration or importation be prohibited.” Martin proposed to allow a prohibition or at least a tax on the importation of slaves. In the first place, as five slaves are to be counted as 3 free men in the apportionment of representatives; such a clause would leave an encouragement to this traffic. In the second place, slaves weakened one part of the Union which the other parts were bound to protect: the privilege of importing them was therefore unreasonable. And, in the third place, it was inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution.

Mr. John Rutledge [SC] did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrections and would readily exempt the other states from the obligation to protect the Southern against them. Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is whether the southern states shall or shall not be parties to the Union. If the northern states consult their interest, they will not oppose the increase of slaves which will increase the commodities of which they will become the carriers.

Mr. Oliver Ellsworth [CT] was for leaving the clause as it stands. Let every state import what it pleases. The morality or wisdom of slavery are considerations belonging to the states themselves. What enriches a part enriches the whole, and the states are the best judges of their particular interest. The old confederation had not meddled with this point, and he did not see any greater necessity for bringing it within the policy of the new one.

Mr. Charles Pinckney [SC] South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of the Congress, that state has expressly and watchfully excepted that of meddling with the importation of Negroes. If the states be all left at liberty on this subject, South Carolina may perhaps by degrees do of herself what is wished, as Virginia and Maryland have already done.

[Adjourned]
IN CONVENTION

Mr. Roger Sherman [CT] was for leaving the clause as it stands. He disapproved of the slave trade; yet as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, and as it was expedient to have as few objections as possible to the proposed scheme of Government, he thought it best to leave the matter as we find it. He observed that the abolition of Slavery seemed to be going on in the U. S. and that the good sense of the several states would probably by degrees complete it. He urged on the Convention the necessity of dispatching its business.

Col. George Mason [VA] This infernal traffic [the international slave trade] originated in the avarice of British merchants. The British government constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing states alone but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves, as it did by the Tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell to the Commissioners sent to Virginia, to arm the servants and slaves, in case other means of obtaining its submission should fail. Maryland and Virginia he said had already prohibited the importation of slaves expressly. North Carolina had done the same in substance. All this would be in vain if South Carolina and Georgia be at liberty to import. The western people are already calling out for slaves for their new lands, and will fill that country with slaves if they can be got through South Carolina and Georgia. Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the immigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of heaven on a country. As nations can not be rewarded or punished in the next world they must be in this. By an inevitable chain of causes and effects providence punishes national sins, by national calamities. He lamented that some of our eastern brethren had from a lust of gain embarked in this nefarious traffic. As to the states being in possession of the right to import, this was the case with many other rights, now to be properly given up. He held it essential in every point of view that the general government should have power to prevent the increase of slavery.

Mr. Oliver Ellsworth [CT] As he had never owned a slave could not judge of the effects of slavery on character. He said, however, that if it was to be considered in a moral light we ought to go farther and free those already in the country. As slaves also multiply so fast in Virginia and Maryland that it is cheaper to raise than import them, while in the sickly rice swamps foreign supplies are necessary, if we go no farther than is urged, we shall be unjust towards South Carolina and Georgia. Let us not intermeddle. As population increases, poor laborers will be so plenty as to render slaves useless. Slavery in time will not be a speck in our country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts. As to the danger of insurrections from foreign influence, that will become a motive to kind treatment of the slaves.

Mr. Charles Pinckney [SC] If slavery be wrong, it is justified by the example of all the world. He
cited the case of Greece, Rome, and other ancient states; the sanction given by France, England, Holland and other modern states. In all ages one half of mankind have been slaves. If the southern states were let alone they will probably of themselves stop importations. He would himself as a citizen of South Carolina vote for it. An attempt to take away the right as proposed will produce serious objections to the Constitution which he wished to see adopted.

General Charles Cotesworth Pinckney [SC] declared it to be his firm opinion that if himself and all his colleagues were to sign the Constitution and use their personal influence, it would be of no avail towards obtaining the assent of their Constituents. South Carolina and Georgia cannot do without slaves. As to Virginia she will gain by stopping the importations. Her slaves will rise in value, and she has more than she wants. It would be unequal to require South Carolina and Georgia to confederate on such unequal terms. He said the Royal assent before the Revolution had never been refused to South Carolina as to Virginia. He contended that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade. The more consumption also, and the more of this, the more of revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied [taxed] like other imports, but should consider a rejection of the clause as an exclusion of South Carolina from the Union.

Mr. Abraham Baldwin [GA] had conceived national objects alone to be before the Convention, not such as like the present were of a local nature. Georgia was decided on this point. That state has always hitherto supposed a general government to be the pursuit of the central states who wished to have a vortex for everything; that her distance would preclude her from equal advantage; and that she could not prudently purchase it by yielding national powers. From this it might be understood in what light she would view an attempt to abridge one of her favorite prerogatives. If left to herself, she may probably put a stop to the evil. As one ground for this conjecture, he took notice of the sect of ——– which he said was a respectable class of people, who carried their ethics beyond the mere equality of men, extending their humanity to the claims of the whole animal creation.

Mr. James Wilson [PA] observed that if South Carolina and Georgia were themselves disposed to get rid of the importation of slaves in a short time as had been suggested, they would never refuse to unite because the importation might be prohibited. As the section now stands all articles imported are to be taxed. Slaves alone are exempt. This is in fact a bounty on that article.

Mr. Elbridge Gerry [MA] thought we had nothing to do with the conduct of the states as to slaves, but ought to be careful not to give any sanction to it.

Mr. John Dickinson [DE] considered it as inadmissible on every principle of honor and safety that the importation of slaves should be authorized to the states by the Constitution. The true question was whether the national happiness would be promoted or impeded by the importation, and this question ought to be left to the national government, not to the States particularly interested. If England and France permit slavery, slaves are, at the same time, excluded from both those Kingdoms. Greece and Rome were made unhappy by their slaves. He could not believe that the southern states would refuse to confederate on the account apprehended; especially as the power was not likely to be immediately exercised by the general government.
Mr. Hugh Williamson [NC] stated the law of North Carolina on the subject, to wit that it did not directly prohibit the importation of slaves. It imposed a duty of £5 on each slave imported from Africa; £10 on each from elsewhere; and £50 on each from a state licensing manumission. He thought the southern states could not be members of the Union if the clause should be rejected, and that it was wrong to force anything down, not absolutely necessary, and which any state must disagree to.

Mr. Rufus King [MA] thought the subject should be considered in a political light only. If two states will not agree to the Constitution as stated on one side, he could affirm with equal belief on the other, that great and equal opposition would be experienced from the other states. He remarked on the exemption of slaves from duty while every other import was subjected to it, as an inequality that could not fail to strike the commercial sagacity of the northern and middle states.

Mr. John Langdon [NH] was strenuous for giving the power to the general government. He could not with a good conscience leave it with the states who could then go on with the traffic, without being restrained by the opinions here given that they will themselves cease to import slaves.

General Charles Cotesworth Pinckney [SC] thought himself bound to declare candidly that he did not think South Carolina would stop her importations of slaves in any short time, but only stop them occasionally as she now does. He moved to commit the clause that slaves might be made liable to an equal tax with other imports which he thought right and which would remove one difficulty that had been started.

Mr. John Rutledge [SC] If the Convention thinks that North Carolina, South Carolina, and Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those states will never be such fools as to give up so important an interest. He was strenuous against striking out the Section, and seconded the motion of General Pinckney for a commitment.

Mr. Gouverneur Morris [PA] wished the whole subject to be committed [referring the clause to a committee to work out a compromise solution] including the clauses relating to taxes on exports and to a navigation act. These things may form a bargain among the northern and southern States.

Mr. Pierce Butler [SC] declared that he never would agree to the power of taxing exports.

Mr. Roger Sherman [CT] said it was better to let the southern states import slaves than to part with them, if they made that a sine qua non. He was opposed to a tax on slaves imported as making the matter worse, because it implied they were property. He acknowledged that if the power of prohibiting the importation should be given to the general government that it would be exercised. He thought it would be its duty to exercise the power.

Mr. George Read [DE] was for the commitment provided the clause concerning taxes on exports should also be committed.

Mr. Roger Sherman [CT] observed that that clause had been agreed to and therefore could not be committed.

Mr. Edmund Randolph [VA] was for committing in order that some middle ground might, if possible, be found. He could never agree to the clause as it stands. He would sooner risk the Constitution. He dwelt on the dilemma to which the Convention was exposed. By agreeing to the clause, it would revolt the Quakers, the Methodists, and many others in the states having
no slaves. On the other hand, two states might be lost to the Union. Let us then, he said, try the chance of a commitment.

Narrator: The state delegations voted (7 – 3) to commit Article 7, Sections 4, 5, and 6 to a committee chaired by William Livingston. The voting breakdown was Aye: CT, NJ, MD, VA, NC, SC, GA; No: NH, PA, DE; Absent: MA.

The committee appointed consisted of Livingston, Baldwin, Clymer, Dickinson, Johnson, King, Langdon, Madison, Luther Martin, C.C. Pinckney, and Williamson. Note that Charles Pinckney and Rutledge were not appointed to the committee.

Questions for Discussion

1. List some of the themes that emerge from this debate:

2. Read the passages from the U.S. Constitution listed below and then discuss this question: Was the Constitution a pro-slavery document, or did its Framers intend to set slavery on the road to extinction? Explain your reasoning.
   - Article 1, Section 2, Clause 3
   - Article 1, Section 9, Clauses 1 and 5, 6
   - Article 4, Section 3
   - Article 5
Handout K: Mason’s Objections to the Constitution

Directions: Analyze Mason’s objections to the Constitution, determine what principle of government he believed the Constitution may have violated, and review the Constitution as it stands today to fill in the table below.

Background: In the closing days of the 1787 Philadelphia Convention, George Mason determined that he would not sign the Constitution. He wrote his “Objections to this Constitution of Government” on his copy of the September 12 draft Constitution. He also shared his concerns with several people, and his objections were published in the Virginia Journal on November 22.

1. There is no Declaration of Rights, and the laws of the general government being paramount to the laws and constitution of the several States, the Declarations of Rights in the separate States are no security. Nor are the people secured even in the enjoyment of the benefit of the common law.

2. In the House of Representatives there is not the substance but the shadow only of representation; which can never produce proper information in the legislature, or inspire confidence in the people; the laws will therefore be generally made by men little concerned in, and unacquainted with their effects and consequences.

3. The Senate have the power of altering all money bills, and of originating appropriations of money, and the salaries of the officers of their own appointment, in conjunction with the president of the United States, although they are not the representatives of the people or amenable to them. These with their other great powers, viz.: their power in the appointment of ambassadors and all public officers, in making treaties, and in trying all impeachments, their influence upon and connection with the supreme Executive from these causes, their duration of office and their being a constantly existing body, almost continually sitting, joined with their being one complete branch of the legislature, will destroy any balance in the government, and enable them to accomplish what usurpations they please upon the rights and liberties of the people.

4. The Judiciary of the United States is so constructed and extended, as to absorb and destroy the judiciaries of the several States; thereby rendering law as tedious, intricate and expensive, and justice as unattainable, by a great part of the community, as in England, and enabling the rich to oppress and ruin the poor.

5. The President of the United States has no Constitutional Council, a thing unknown in any safe and regular government. He will therefore be unsupported by proper information and advice, and will generally be directed by minions and favorites; or he will become a tool to the Senate--or a Council of State will grow out of the principal officers of the great departments; the worst and most dangerous of all ingredients for such a Council in a free country; From this fatal
defect has arisen the improper power of the Senate in the appointment of public officers, and the alarming dependence and connection between that branch of the legislature and the supreme Executive. Hence also spurring that unnecessary officer the Vice-President, who for want of other employment is made president of the Senate, thereby dangerously blending the executive and legislative powers, besides always giving to some one of the States an unnecessary and unjust pre-eminence over the others.

6. The President of the United States has the unrestrained power of granting pardons for treason, which may be sometimes exercised to screen from punishment those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt.

7. By declaring all treaties supreme laws of the land, the Executive and the Senate have, in many cases, an exclusive power of legislation; which might have been avoided by proper distinctions with respect to treaties, and requiring the assent of the House of Representatives, where it could be done with safety.

8. By requiring only a majority to make all commercial and navigation laws, the five Southern States, whose produce and circumstances are totally different from that of the eight Northern and Eastern States, may be ruined, for such rigid and premature regulations may be made as will enable the merchants of the Northern and Eastern States not only to demand an exorbitant freight, but to monopolize the purchase of the commodities at their own price, for many years, to the great injury of the landed interest, and impoverishment of the people; and the danger is the greater as the gain on one side will be in proportion to the loss on the other. Whereas requiring two-thirds of the members present in both Houses would have produced mutual moderation, promoted the general interest, and removed an insuperable objection to the adoption of this government.

9. Under their own construction of the general clause, at the end of the enumerated powers, the Congress may grant monopolies in trade and commerce, constitute new crimes, inflict unusual and severe punishments, and extend their powers as far as they shall think proper; so that the State legislatures have no security for the powers now presumed to remain to them, or the people for their rights. There is no declaration of any kind, for preserving the liberty of the press, or the trial by jury in civil causes; nor against the danger of standing armies in time of peace.

10. The State legislatures are restrained from laying export duties on their own produce. Both the general legislature and the State legislature are expressly prohibited making ex post facto laws; though there never was nor can be a legislature but must and will make such laws, when necessity and the public safety require them; which will hereafter be a breach of all the constitutions in the Union, and afford precedents for other innovations.

11. This government will set out a moderate aristocracy: it is at present impossible to foresee whether it will, in its operation, produce a monarchy, or a corrupt, tyrannical aristocracy; it will most probably vibrate some years between the two, and then terminate in the one or the other. The general legislature is restrained from prohibiting the further importation of slaves for twenty odd years; though such importations render the United States weaker, more vulnerable, and less capable of defense.
**Directions:** Fill in the Constitutional principle that Mason may have had in mind. In the “Constitutional Reference” column, fill in how you think Mason would respond to the Constitution in its amended form today. Constitutional principles may include: natural rights; separation of powers; checks and balances; limited government; republicanism/representative government; federalism; justice; consent of the governed

<table>
<thead>
<tr>
<th>Mason's Objection</th>
<th>A. Constitutional Principle</th>
<th>B. Constitutional Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. No Bill of Rights.</td>
<td></td>
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<td>2. In the House of Representatives there is only the shadow of representation;</td>
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<td>laws may be made by people who do not have the proper information or the</td>
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<td>confidence of the people.</td>
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<td>3. Senate not elected directly by the people and not answerable to them; Senate</td>
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<td>has too much power and there is no effective check on them.</td>
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<td>4. National courts could destroy the state courts; rich people could use the</td>
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<td>federal courts to oppress and ruin the poor.</td>
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<td>5. No council of advisors for the president; the president could be overly</td>
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<td>influenced by the Senate.</td>
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<td>6. The president has unlimited power to pardon for crimes, including treason.</td>
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<td>7. All treaties are the supreme law of the land, and are created by the president</td>
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<tr>
<td>and consent of the Senate. The House of Representatives, the only branch directly</td>
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<tr>
<td>answerable to the people, is not part of the treaty-making process.</td>
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<tr>
<td>Mason's Objection</td>
<td>A. Constitutional Principle</td>
<td>B. Constitutional Reference</td>
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<tr>
<td>8. Since commercial and navigation laws can be made by Congress based on only a majority vote, rather than a 2/3 vote, Congress may create monopolies or make laws that favor the industrialization of the North and disadvantage the South.</td>
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<tr>
<td>9. Because of the necessary and proper clause, there is no adequate limitation on Congress’s powers. The powers of state legislatures and the liberties of the people could be in danger. There is no protection of liberty of the press or trial by jury in civil cases; nor is there protection against standing armies in peacetime.</td>
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<tr>
<td>10. States cannot levy export taxes on their own exports.</td>
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<tr>
<td>11. The Constitution sets up an aristocracy; it will be 20 more years before Congress can stop the foreign slave trade.</td>
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</tbody>
</table>
# Handout A: State-by-State Ratification Summary

**Directions:** Use the following table as a reference in analyzing the constitutional ratification process. What trends and patterns do you note?

<table>
<thead>
<tr>
<th>States in Order of Ratification</th>
<th>Date of Ratification</th>
<th>Convention Vote For Ratification</th>
<th>Convention Vote Against Ratification</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delaware</td>
<td>Dec. 7, 1787</td>
<td>Unanimous</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Dec. 12, 1787</td>
<td>46</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>Dec. 18, 1787</td>
<td>Unanimous</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Georgia</td>
<td>Jan. 2, 1788</td>
<td>Unanimous</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>Jan. 8, 1788</td>
<td>128</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Massachusetts (including Maine)</td>
<td>Feb. 6, 1788</td>
<td>187</td>
<td>168</td>
<td>Ratified based on proposition that amendments would be considered in the First Congress; 9 amendments proposed.</td>
</tr>
<tr>
<td>Maryland</td>
<td>Apr. 28, 1788</td>
<td>63</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>South Carolina</td>
<td>May 23, 1788</td>
<td>149</td>
<td>73</td>
<td>5 declarations &amp; resolves proposed</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>June 21, 1788</td>
<td>57</td>
<td>46</td>
<td>12 amendments proposed</td>
</tr>
<tr>
<td>Virginia</td>
<td>June 26, 1788</td>
<td>89</td>
<td>79</td>
<td>20 amendments and an additional 20 items constituting a bill of rights proposed</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Constitution declared ratified July 2, 1788.</td>
</tr>
<tr>
<td>States in Order of Ratification</td>
<td>Date of Ratification</td>
<td>Convention Vote For Ratification</td>
<td>Convention Vote Against Ratification</td>
<td>Notes</td>
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<tr>
<td>New York</td>
<td>July 26, 1788</td>
<td>30</td>
<td>27</td>
<td>31 amendments and an additional 25 items in a bill of rights proposed</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Nov. 21, 1789</td>
<td>195</td>
<td>77</td>
<td>Ratified only after the First Congress sent twelve amendment proposals to the states for ratification. 26 amendments and an additional 20 items constituting a bill of rights proposed</td>
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<tr>
<td>Rhode Island</td>
<td>May 29, 1790</td>
<td>34</td>
<td>32</td>
<td>Ratified only after the First Congress sent twelve amendment proposals to the states for ratification. 21 amendments and an additional 18 items constituting a bill of rights proposed</td>
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Background on Handouts B - I

Three delegates still at the Convention in September, 1787 made it clear that they did not approve the Constitution. Edmund Randolph and George Mason of Virginia and Elbridge Gerry of Massachusetts refused to sign the Constitution, mainly because of the scope of the powers given to the federal government. However, 39 delegates approved it, and voted, with unanimous consent of all states present, to send it to the Confederation Congress and to the states for ratification. The debate continued in each state’s ratifying convention. See Table, Handout A, for a summary of the ratification process. In the Handouts following, excerpts are provided for selected articles and pamphlets written on both sides of the debate. Some of the fiercest debate occurred in New York and was published in the form of essays in New York and Philadelphia newspapers. Alexander Hamilton, James Madison, and John Jay, writing under the pseudonym, “Publius,” organized a vigorous campaign to write a series of essays explaining and defending the Constitution. Opponents of the Constitution wrote under the pseudonyms, “Brutus,” “Centinel,” “Cato,” and “The Federal Farmer.”

Throughout these excerpts, emphasis is added in **bold font** to assist the reader in analysis.
Handout B: Excerpts from *Brutus I*, Brutus, October 18, 1787

Directions: After reading, list at least 6 – 8 of the main ideas and objections that Brutus raised against the Constitution.

To the Citizens of the State of New-York.

... 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; ... 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 ...

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...

The first question that presents itself on the subject is, whether a confederated government be the best for the United States or not? Or in other words, whether the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction of one executive and judicial; or whether they should continue thirteen confederated republics, under the direction and control of a supreme federal head for certain defined national purposes only?...

The legislative power is competent to lay taxes, duties, imposts, and excises; — there is no limitation to this power, unless it be said that the clause which directs the use to which those taxes, and duties shall be applied, may be said to be a limitation; but this is no restriction of the power at all, ...[because] the legislature have authority to contract debts at their discretion; they are the sole judges of what is necessary to provide for the common defense, and they only are to determine what is for the general welfare:
this power therefore is neither more nor less, than a power to lay and collect taxes, imposts, and excises, at their pleasure; ...It is proper here to remark, that the authority to lay and collect taxes is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in process of time draw all other after it; it is the great mean of protection, security, and defense, in a good government, and the great engine of oppression and tyranny in a bad one...

When the federal government begins to exercise the right of taxation in all its parts, the legislatures of the several states will find it impossible to raise monies to support their governments. Without money they cannot be supported, and they must dwindle away, and, as before observed, their powers absorbed in that of the general government.

It might be here shewn, that the power in the federal legislative, to raise and support armies at pleasure, as well in peace as in war, and their control over the militia, tend, not only to a consolidation of the government, but the destruction of liberty...

The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as Congress may from time to time ordain and establish. The powers of these courts are very extensive... It is easy to see, that in the common course of things, these courts will eclipse the dignity, and take away from the respectability, of the state courts...

The legislature of the United States are vested with the great and uncontrollable powers, of laying and collecting taxes, duties, imposts, and excises; of regulating trade, raising and supporting armies, organizing, arming, and disciplining the militia, instituting courts, and other general powers. And are by this clause invested with the power of making all laws, proper and necessary, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the state governments, and reduce this country to one single government. And if they may do it, it is pretty certain they will; for it will be found that the power retained by individual states, small as it is, will be a clog upon the wheels of the government of the United States; the latter therefore will be naturally inclined to remove it out of the way. Besides, it is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with power, are ever disposed to increase it, and to acquire a superiority over every thing that stands in their way. This disposition, which is implanted in human nature, will operate in the federal legislature to lessen and ultimately to subvert the state authority, and having such advantages, will most certainly succeed, if the federal government succeeds at all. It must be very evident then, that what this constitution wants of being a complete consolidation of the several parts of the union into one complete government, possessed of perfect legislative, judicial, and executive powers, to all intents and purposes, it will necessarily acquire in its exercise and operation.

... It is here taken for granted, that all agree in this, that whatever government we adopt, it ought to be a free one; that it should be so framed as to secure the liberty of the citizens of America, and such an one as to admit of a full, fair, and equal representation of the people...

If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of
inhabitants, and these increasing in such rapid progress as that of the whole United States...

In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they may agree upon; the latter by the will of one, or a few. ...Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldy, as to be subject in great measure to the inconveniency of a democratic government.

The territory of the United States is of vast extent; it now contains near three millions of souls, and is capable of containing much more than ten times that number. Is it practicable for a country, so large and so numerous as they will soon become, to elect a representation, that will speak their sentiments, without their becoming so numerous as to be incapable of transacting public business? It certainly is not. In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. ...The laws and customs of the several states are, in many respects, very diverse, and in some opposite; each would be in favor of its own interests and customs, and, of consequence, a legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed of such heterogeneous and discordant principles, as would constantly be contending with each other...

In despotic governments, as well as in all the monarchies of Europe, standing armies are kept up to execute the commands of the prince or the magistrate, and are employed for this purpose when occasion requires: But they have always proved the destruction of liberty, and [are] abhorrent to the spirit of a free republic...

A free republic will never keep a standing army to execute its laws. It must depend upon the support of its citizens. But when a government is to receive its support from the aid of the citizens, it must be so constructed as to have the confidence, respect, and affection of the people... The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them when they misbehave: but in a republic of the extent of this continent, the people in general would be acquainted with very few of their rulers: the people at large would know little of their proceedings, and it would be extremely difficult to change them. ...The consequence will be, they will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass. Hence the government will be nerveless and inefficient, and no way will be left to render it otherwise, but by establishing an armed force to execute the laws at the point of the bayonet — a government of all others the most to be dreaded.

In a republic of such vast extent as the United-States, the legislature cannot attend to the various concerns and wants of its different parts. It cannot be sufficiently numerous to be acquainted with the local condition and wants of the different districts, and if it could, it is impossible it should have sufficient time
to attend to and provide for all the variety of cases of this nature, that would be continually arising.

In so extensive a republic, the great officers of government would soon become above the control of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them. ...The command of all the troops and navy of the republic, the appointment of officers, the power of pardoning offences, the collecting of all the public revenues, and the power of expending them, with a number of other powers, must be lodged and exercised in every state, in the hands of a few. When these are attended with great honor and emolument, as they always will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing men, such men will be ever restless in their pursuit after them. They will use the power, when they have acquired it, to the purposes of gratifying their own interest and ambition, and it is scarcely possible, in a very large republic, to call them to account for their misconduct, or to prevent their abuse of power.

These are some of the reasons by which it appears, that a free republic cannot long subsist over a country of the great extent of these states. If then this new constitution is calculated to consolidate the thirteen states into one, as it evidently is, it ought not to be adopted...

List and explain 6-8 of the main ideas and objections Brutus raised about the Constitution.
After full experience of the insufficiency of the subsisting federal government, you are invited 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 to decide, by their conduct and example, 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 period when 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...

And yet, just as these sentiments must appear to candid men, we have already sufficient indications, that it will happen in this as in all former cases of great national discussion. A torrent of angry and malignant passions will be let loose. To judge from the conduct of the opposite parties, we shall be led to conclude, that they will mutually hope to evince the justness of their opinions, and to increase the number of their converts, by the loudness of their declamations, and by the bitterness of their invectives. An enlightened zeal for the energy and efficiency of government, will be stigmatized as the offspring of a temper fond of power and hostile to the principles of liberty. ...On the other hand, it will be equally forgotten, that the vigor of government is essential to the security of liberty; that, in the contemplation of a sound and well informed judgment, their interests can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people, than under the forbidding appearances of zeal for the firmness and efficiency of government. History will teach us, that the former has been found a much more certain road to the introduction of despotism, than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career, by paying an obsequious court to the people... commencing demagogues, and ending tyrants.

In the course of the preceding observations, it has been my aim, my fellow-citizens, to put you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the utmost moment to your welfare, by any impressions, other than those which may result from the evidence of truth. ...I own to you, that,
after having given it an attentive consideration, I am clearly of opinion it is your interest to adopt it [the Constitution]. I am convinced, that this is the safest course for your liberty, your dignity, and your happiness... I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded...

I propose, in a series of papers, to discuss the following interesting particulars... The utility of the UNION to your political prosperity... The insufficiency of the present confederation to preserve that Union... The necessity of a government at least equally energetic with the one proposed, to the attainment of this object... The conformity of the proposed constitution to the true principles of republican government... Its analogy to your own state constitution... and lastly, The additional security, which its adoption will afford to the preservation of that species of government, to liberty and to property.

In the progress of this discussion, I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have any claim to attention.

It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION, a point, no doubt, deeply engraved on the hearts of the great body of the people in every state, and one which, it may be imagined, has no adversaries. But the fact, is that we already hear it whispered in the private circles of those who oppose the new constitution, that the Thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole. This doctrine will, in all probability, be gradually propagated, till it has votaries enough to countenance its open avowal. For nothing can be more evident, to those who are able to take an enlarged view of the subject, than the alternative of an adoption of the constitution, or a dismemberment of the Union. It may, therefore, be essential to examine particularly the advantages of that Union, the certain evils, and so the probable dangers, to which every state will be exposed from its dissolution. This shall accordingly be done.

List and explain at least 4 main points that Publius made in his defense of the Constitution.
Handout D: Excerpts from *Brutus II*, Brutus, November 1, 1787

To the Citizens of the State of New-York.

...When a building is to be erected which is intended to stand for ages, the foundation should be firmly laid. The constitution proposed to your acceptance, is designed not for yourselves alone, but for generations yet unborn. The principles, therefore, upon which the social compact is founded, ought to have been clearly and precisely stated, and the most express and full declaration of rights to have been made — But on this subject there is almost an entire silence.

If we may collect the sentiments of the people of America, from their own most solemn declarations, they hold this truth as self evident, that all men are by nature free. No one man, therefore, or any class of men, have a right, by the law of nature, or of God, to assume or exercise authority over their fellows. The origin of society then is to be sought, not in any natural right which one man has to exercise authority over another, but in the united consent of those who associate. ...The common good, therefore, is the end [goal] of civil government, and common consent, the foundation on which it is established. To effect this end, it was necessary that a certain portion of natural liberty should be surrendered, in order, that what remained should be preserved: ...So much... must be given up, as will be sufficient to enable those, to whom the administration of the government is committed, to establish laws for the promoting the happiness of the community, and to carry those laws into effect. But it is not necessary, for this purpose, that individuals should relinquish all their natural rights. Some are of such a nature that they cannot be surrendered. Of this kind are the rights of conscience, the right of enjoying and defending life, etc. Others are not necessary to be resigned, in order to attain the end for which government is instituted, these therefore ought not to be given up. To surrender them, would counteract the very end of government, to wit, the common good. From these observations it appears, that in forming a government on its true principles, the foundation should be laid in the manner I before stated, by expressly **reserving to the people such of their essential natural rights, as are not necessary to be parted with**. The same reasons which at first induced mankind to associate and institute government, will operate to influence them to observe this precaution. **If they had been disposed to conform themselves to the rule of immutable righteousness, government would not have been requisite. It was because one part exercised fraud, oppression, and violence on the other, that men came together, and agreed that certain rules should be formed, to regulate the conduct of all, and the power of the whole community lodged in the hands of rulers to enforce an obedience to them. But rulers have the same propensities as other men; they are as likely to use the power with which they are vested for private purposes, and to the injury and oppression of those over whom they are placed, as individuals in a state of nature are to injure and oppress one another. It is therefore as proper that bounds should be set to their authority, as that government should have at
first been instituted to restrain private injuries.

This principle, which seems so evidently founded in the reason and nature of things, is confirmed by universal experience. Those who have governed, have been found in all ages ever active to enlarge their powers and abridge the public liberty... From this it appears, that at a time when the pulse of liberty beat high and when an appeal was made to the people to form constitutions for the government of themselves, it was their universal sense, that such declarations should make a part of their frames of government. It is therefore the more astonishing, that this grand security, to the rights of the people, is not to be found in this constitution.

... To set this matter in a clear light, permit me to instance some of the articles of the bills of rights of the individual states, and apply them to the case in question.

For the security of life, in criminal prosecutions, the bills of rights of most of the states have declared, that no man shall be held to answer for a crime until he is made fully acquainted with the charge brought against him; he shall not be compelled to accuse, or furnish evidence against himself — The witnesses against him shall be brought face to face, and he shall be fully heard by himself or counsel. That it is essential to the security of life and liberty, that trial of facts be in the vicinity where they happen. Are not provisions of this kind as necessary in the general government, as in that of a particular state? The powers vested in the new Congress extend in many cases to life; they are authorized to provide for the punishment of a variety of capital crimes, and no restraint is laid upon them in its exercise, save only, that “the trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be in the state where the said crimes shall have been committed...

For the security of liberty it has been declared, “that excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted...

For the purpose of securing the property of the citizens, it is declared by all the states, “that in all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.”

Does not the same necessity exist of reserving this right, under this national compact, as in that of these states? Yet nothing is said respecting it. In the bills of rights of the states it is declared, that a well regulated militia is the proper and natural defense of a free government — That as standing armies in time of peace are dangerous, they are not to be kept up, and that the military should be kept under strict subordination to, and controlled by the civil power.

The same security is as necessary in this constitution, and much more so; for the general government will have the sole power to raise and to pay armies, and are under no control in the exercise of it; yet nothing of this is to be found in this new system.

I might proceed to instance a number of other rights, which were as necessary to be reserved, such as, that elections should be free, that the liberty of the press should be held sacred; but the instances adduced, are sufficient to prove, that this argument is without foundation. — Besides, it is evident, that the reason here assigned was not the true one, why the framers of this constitution omitted a bill of rights; if it had been, they would not have made certain reservations, while they totally omitted others of more importance. We find they have, in the 9th section of the first article, declared, that the writ of habeas corpus shall not be suspended, unless in
cases of rebellion — that no bill of attainder, or ex post facto law, shall be passed — that no title of nobility shall be granted by the United States, &c. If every thing which is not given is reserved, what propriety is there in these exceptions? ...

So far it is from being true, that a bill of rights is less necessary in the general constitution than in those of the states, the contrary is evidently the fact. — This system, if it is possible for the people of America to accede to it, will be an original compact; and being the last, will, in the nature of things, vacate every former agreement inconsistent with it. For it being a plan of government received and ratified by the whole people, all other forms, which are in existence at the time of its adoption, must yield to it. This is expressed in positive and unequivocal terms, in the 6th article, “That this constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution, or laws of any state, to the contrary notwithstanding...

It is therefore not only necessarily implied thereby, but positively expressed, that the different state constitutions are repealed and entirely done away, so far as they are inconsistent with this, with the laws which shall be made in pursuance thereof, or with treaties made, or which shall be made, under the authority of the United States; of what avail will the constitutions of the respective states be to preserve the rights of its citizens? ... No privilege, reserved by the bills of rights, or secured by the state government, can limit the power granted by this, or restrain any laws made in pursuance of it. It stands therefore on its own bottom, and must receive a construction by itself without any reference to any other — And hence it was of the highest importance, that the most precise and express declarations and reservations of rights should have been made...

So clear a point is this, that I cannot help suspecting, that persons who attempt to persuade people, that such reservations were less necessary under this constitution than under those of the states, are willfully endeavoring to deceive, and to lead you into an absolute state of vassalage [subjection; servitude].

Critical Thinking Questions

1. Brutus wrote, “The principles, therefore, upon which the social compact is founded, ought to have been clearly and precisely stated, and the most express and full declaration of rights to have been made — But on this subject there is almost an entire silence.” List at least 6 – 8 of the principles that he believed should have been explicitly stated in the Constitution.

2. What are some specific elements that Brutus wrote are found in the state constitutions and are at least as important to be listed in the general Constitution? List at least 5.

3. Why was Brutus especially concerned about this passage from Article 6? “That this constitution and the laws of the United States...shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution, or laws of any state, to the contrary notwithstanding...”?

4. What did Brutus warn about anyone who attempted to persuade the people that a bill of rights in the general Constitution was unnecessary?
Handout E: Excerpts from Federalist No. 10, James Madison, November 22, 1787

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. ... The instability, injustice, and confusion, introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have every where perished; ... Complaints are every where heard from our most considerate and virtuous citizens, ... 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. ... 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... These must be chiefly, if not wholly, effects of the unsteadiness and injustice, with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

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 is 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 a 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.

The second expedient is as impracticable, as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. ... The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to an uniformity of interests. The protection of these faculties, is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus
sown in the nature of man; and we see
them everywhere brought into different
degrees of activity, according to the different
circumstances of civil society. A zeal for
different opinions concerning religion,
concerning government, and many other
points, as well of speculation as of practice; an
attachment to different leaders, ambitiously
contending for pre-eminence and power;
or to persons of other descriptions, whose
fortunes have been interesting to the human
passions, have, in turn, divided mankind into
parties, inflamed them with mutual animosity,
and rendered them much more disposed
to vex and oppress each other, than to co-
operate for their common good. So strong
is this propensity of mankind, to fall into
mutual animosities, that where no substantial
occasion presents itself, the most frivolous
and fanciful distinctions have been sufficient
to kindle their unfriendly passions, and excite
their most violent conflicts. 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. Those who are creditors,
and those who are debtors, fall under a
like discrimination. A landed interest, a
manufacturing interest, a mercantile interest,
a monied interest, with many lesser interests,
grow up of necessity in civilized nations, and
divide them into different classes, actuated
by different sentiments and views. The
regulation of these various and interfering
interests, forms the principal task of modern
legislation, and involves the spirit of party
and faction in the necessary and ordinary
operations of government.

No man is allowed to be a judge in his own
cause; because his interest would certainly bias
his judgment, and, not improbably, corrupt his
integrity. ... Is a law proposed concerning private
debts? It is a question to which the creditors are
parties on one side, and the debtors on the other.
Justice ought to hold the balance between
them. Yet the parties [within the legislature]
are, and must be, themselves the judges; and
the most numerous party, or, in other words,
the most powerful faction, must be expected
to prevail. Shall domestic manufactures be
encouraged, and in what degree, by restrictions
on foreign manufactures? are questions which
would be differently decided by the landed and
the manufacturing classes; and probably by
neither with a sole regard to justice and the
public good. The apportionment of taxes, on the
various descriptions of property, is an act which
seems to require the most exact impartiality;
yet there is, perhaps, no legislative act in which
greater opportunity and temptation are given
to a predominant party, to trample on the rules
of justice. Every shilling with which they over-
burden the inferior number, is a shilling saved to
their own pockets.

It is in vain to say, that enlightened statesmen
will be able to adjust these clashing interests,
and render them all subservient to the public
good. Enlightened statesmen will not always
be at the helm...

The inference to which we are brought, is, that
the causes of faction cannot be removed; and
that relief is only to be sought in the means of
controlling its effects.

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. Let me add, that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority, at the same time, must be prevented; or the majority, having such co-existent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know, that neither moral nor religious motives can be relied on as an adequate control...

From this view of the subject, it may be concluded, that a pure democracy, by which I mean, a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert, results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence it is, that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have, in general, been as short in their lives, as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed, that, by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the union.

The two great points of difference, between a democracy and a republic, are, first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen, that the public voice, pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests...
of the people. The question resulting is, whether small or extensive republics are most favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations.

In the first place, ... if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts, by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit, and the most diffusive and established characters.

It must be confessed, that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal constitution forms a happy combination in this respect; the great and aggregate interests, being referred to the national, the local and particular to the state legislatures.

The other point of difference is, the greater number of citizens, and extent of territory, which may be brought within the compass of republican, than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other...

Hence it clearly appears, that the same advantage, which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic ... is enjoyed by the union over the states composing it. Does this advantage consist in the substitution of representatives, whose enlightened views and virtuous sentiments render them superior to local prejudices, and to schemes of injustice? It will not be denied, that the representation of the union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties, comprised within the union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority?
Here, again, the extent of the union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular states, but will be unable to spread a general conflagration through the other states: a religious sect may degenerate into a political faction in a part of the confederacy; but the variety of sects dispersed over the entire face of it, must secure the national councils against any danger from that source: a rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the union, than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire state.

In the extent and proper structure of the union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit, and supporting the character of federalists.
Handout F: Summary of *Federalist No. 10*

Madison’s definition of faction:

1. _____________________________________________________________________________________________________________
_______________________________________________________________________________________________________________
______________________________________________________________________________________________________________

Two methods of curing the mischiefs of faction:

2. _______________________________________________ 3. _______________________________________________

Two methods of removing the cause:

<table>
<thead>
<tr>
<th>4. Method 1</th>
<th>5. Method 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Description:</td>
<td>7. Description</td>
</tr>
</tbody>
</table>

8. The most common and durable source of faction is ______________________________________________________
_______________________________________________________________________________________________________________

9. Why can we not place our confidence in enlightened statesmen? _______________________________________
_______________________________________________________________________________________________________________

10. Since the causes of faction cannot be removed, relief can only come through _____________________
_______________________________________________________________________________________________________________
11. If a faction is less than a majority, relief can come from ________________________________
__________________________________________________________________________________

12. When the majority is included in a faction, they could ________________________________
__________________________________________________________________________________

13. The great object of our inquiry is to achieve security of

a. _______________________________________________ b. _______________________________________________, and

c. _______________________________________________

14. Two means may be used to achieve these goals:

a. ______________________________________________________________________________________

b. ______________________________________________________________________________________

15. Methods that won’t work are ______________________________________________________________________

____________________________________________________________________________________

16. The cure for the mischiefs of faction can be found in __________________________________________

____________________________________________________________________________________

17. Differences between democracy and republic: ________________________________________________

____________________________________________________________________________________

18. The effect of the first difference is ________________________________________________________

____________________________________________________________________________________

perhaps resulting in ________________________________________________________________________.

19. On the other hand, what kind of men might win elections? _________________________________

____________________________________________________________________________________
20. Which is more favorable to electing the proper guardians of the people’s interests? Small or large republics? ______________________________, because ______________________________.

21. Why are factious combinations less likely in large republics? ______________________________

   ________________________________________________________________________________________

22. Complete this statement: “Extend the sphere, and ______________________________

   ________________________________________________________________________________________

   ________________________________________________________________________________________

   ________________________________________________________________________________________

23. Just as a republic is better than a democracy in controlling the mischiefs of factions, a large republic is better than a small one for 3 reasons: ______________________________

   ________________________________________________________________________________________

   ________________________________________________________________________________________

   ________________________________________________________________________________________

24. Complete this statement: “…we behold a republican remedy for the diseases most incident to republican government. And according to ______________________________

   ________________________________________________________________________________________

25. To what extent and in what ways do you agree with Madison’s analysis of the mischiefs of factions and the best ways to control them? ______________________________

   ________________________________________________________________________________________

   ________________________________________________________________________________________

   ________________________________________________________________________________________
Handout G: Excerpts from Federalist No. 44, James Madison, January 25, 1788

The sixth and last class [of the difficulties in dividing power between national and state governments] consists of the several powers and provisions by which efficacy is given to all the rest.

Of these the first is the “power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof.”

Few parts of the Constitution have been assailed with more intemperance than this; yet on a fair investigation of it, as has been elsewhere shown, no part can appear more completely invulnerable. Without the substance of this power, the whole Constitution would be a dead letter. Those who object to the article, therefore, as a part of the Constitution, can only mean that the form of the provision is improper. But have they considered whether a better form could have been substituted?

There are four other possible methods which the Convention might have taken on this subject. They might have copied the second article of the existing Confederation, which would have prohibited the exercise of any power not expressly delegated; they might have attempted a positive enumeration of the powers comprehended under the general terms “necessary and proper”; they might have attempted a negative enumeration of them by specifying the powers excepted from the general definition; they might have been altogether silent on the subject, leaving these necessary and proper powers to construction and inference.

Had the convention taken the first method of adopting the second article of Confederation, it is evident that the new Congress would be continually exposed, as their predecessors have been, to the alternative of construing the term “expressly” with so much rigor as to disarm the government of all real authority whatever, or with so much latitude as to destroy altogether the force of the restriction. It would be easy to show, if it were necessary, that no important power delegated by the Articles of Confederation has been or can be executed by Congress, without recurring more or less to the doctrine of construction or implication. As the powers delegated under the new system are more extensive, the government which is to administer it would find itself still more distressed with the alternative of betraying the public interests by doing nothing, or of violating the Constitution by exercising powers indispensably necessary and proper, but, at the same time, not expressly granted.

Had the convention attempted a positive enumeration of the powers necessary and proper for carrying their other powers into effect, the attempt would have involved a complete digest of laws on every subject to which the Constitution relates; accommodated too not only to the existing state of things, but to all the possible changes which futurity may produce; for in every new application of a general power, the particular powers, which are the means of
attaining the object of the general power, must always necessarily vary with that object, and be often properly varied whilst the object remains the same.

Had they attempted to enumerate the particular powers or means not necessary or proper for carrying the general powers into execution, the task would have been no less chimerical [unrealistic]; and would have been liable to this further objection, that every defect in the enumeration would have been equivalent to a positive grant of authority. If, to avoid this consequence, they had attempted a partial enumeration of the exceptions, and described the residue by the general terms not necessary or proper, it must have happened that the enumeration would comprehend a few of the excepted powers only; that these would be such as would be least likely to be assumed or tolerated, because the enumeration would of course select such as would be least necessary or proper; and that the unnecessary and improper powers included in the residuum would be less forcibly excepted than if no partial enumeration had been made.

Had the Constitution been silent on this head, there can be no doubt that all the particular powers requisite as means of executing the general powers would have resulted to the government by unavoidable implication. No axiom is more clearly established in law, or in reason, than that wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it is included. Had this last method, therefore, been pursued by the convention, every objection now urged against their plan would remain in all its plausibility; and the real inconveniency would be incurred of not removing a pretext which may be seized on critical occasions for drawing into question the essential powers of the Union.

If it be asked what is to be the consequence, in case the Congress shall misconstrue this part of the Constitution and exercise powers not warranted by its true meaning, I answer the same as if they should misconstrue or enlarge any other power vested in them; as if the general power had been reduced to particulars, and any one of these were to be violated; the same, in short, as if the State legislatures should violate their respective constitutional authorities. In the first instance, the success of the usurpation will depend on the executive and judiciary departments, which are to expound and give effect to the legislative acts; and in the last resort a remedy must be obtained from the people who can, by the election of more faithful representatives, annul the acts of the usurpers. The truth is that this ultimate redress may be more confided in against unconstitutional acts of the federal than of the State legislatures, for this plain reason that as every such act of the former will be an invasion of the rights of the latter, these will be ever ready to mark the innovation, to sound the alarm to the people, and to exert their local influence in effecting a change of federal representatives. There being no such intermediate body between the State legislatures and the people interested in watching the conduct of the former, violations of the State constitutions are more likely to remain unnoticed and unredressed.
Critical Thinking Questions

1. According to Madison, what element of the Constitution had been most unfairly attacked? What four alternatives did Madison maintain that the Framers might have used?

2. To what extent and in what ways do you agree with Madison’s statement: “that wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it is included.”

3. According to Madison, what is the remedy if Congress incorrectly exercises its powers under the necessary and proper clause?

4. In what ways can the state governments be expected to react if Congress incorrectly exercises its powers?
To what expedient then shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government, as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which, to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted, that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies, should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another...

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other, would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man, must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions...

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is, to divide the legislature into different branches;
and to render them, by different modes of election, and different principles of action, as little connected with each other, as the nature of their common functions, and their common dependence on the society, will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified...

There are moreover two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people, is submitted to the administration of a single government; and the usurpations are guarded against, by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controlled by itself.

Second. It is of great importance in a republic, not only to guard the society against the oppression of its rulers; but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one, by creating a will in the community independent of the majority, that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens, as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from, and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority. In a free government, the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other, in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. ... Justice is the end [goal] of government. It is the end of civil society. It ever has been, and ever will be, pursued, until it be obtained, or until liberty be lost in the pursuit. In a society, under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the weaker individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak, as well as themselves: so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. ...In the extended republic of the United States, and among the great variety of interests, parties, and sects, which it embraces, a coalition of a majority of the whole society could seldom take place upon any other principles, than those of justice and the general good... It is no less certain than it is important, notwithstanding
the contrary opinions which have been entertained, that the larger the society, provided it lie within a practicable sphere, the more duly capable it will be of self-government. And happily for the republican cause, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the federal principle.

**Critical Thinking Questions**

1. Compare the following passages and show on what points Madison and Brutus agreed.

   a. “If they had been disposed to conform themselves to the rule of immutable righteousness, government would not have been requisite. It was because one part exercised fraud, oppression, and violence on the other, that men came together, and agreed that certain rules should be formed, to regulate the conduct of all, and the power of the whole community lodged in the hands of rulers to enforce an obedience to them. But rulers have the same propensities as other men; they are as likely to use the power with which they are vested for private purposes, and to the injury and oppression of those over whom they are placed, as individuals in a state of nature are to injure and oppress one another. It is therefore as proper that bounds should be set to their authority, as that government should have at first been instituted to restrain private injuries.”
   *Brutus II*, Nov. 1, 1787

   b. “Ambition must be made to counteract ambition. The interest of the man, must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions...”
   *Federalist No. 51*, James Madison, February 6, 1788

2. Madison mentioned such constitutional principles as federalism, separation of powers, checks and balances, limited government, republicanism, consent, and inalienable rights either only briefly or not at all in this excerpt. However, these themes are woven all through the essay. Use marginal notes and highlighting on your copy to show points in which he clearly had these specific principles in mind. Be prepared to discuss your analysis with a partner.

3. Restate the following points in your own words, and state to what extent, if at all, you agree with Madison on each.

   “Justice is the end [goal] of government. It is the end of civil society. It ever has been, and ever will be, pursued, until it be obtained, or until liberty be lost in the pursuit.”

   “In the extended republic of the United States, and among the great variety of interests, parties, and sects, which it embraces, a coalition of a majority of the whole society could seldom take place upon any other principles, than those of justice and the general good...”
Handout I: Excerpts from Patrick Henry Speeches, Virginia Ratifying Convention, June, 1788

June 4, 1788:
And here I would make this enquiry of those worthy characters who composed a part of the late Federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated Government, instead of a confederation. That this is a consolidated Government is demonstrably clear, and the danger of such a Government, is, to my mind, very striking. I have the highest veneration of those Gentlemen,—but, Sir, give me leave to demand, what right had they to say, We, the People. My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask who authorized them to speak the language of, We, the People, instead of We, the States? States are the characteristics, and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States.

June 7, 1788:
This Constitution is said to have beautiful features; but when I come to examine these features, Sir, they appear to me horribly frightful: Among other deformities, it has an awful squinting; it squints towards monarchy: And does not this raise indignation in the breast of every American? Your President may easily become King: Your Senate is so imperfectly constructed that your dearest rights may be sacrificed by what may be a small minority; and a very small minority may continue forever unchangeably this Government, although horribly defective: Where are your checks in this Government? Your strong holds will be in the hands of your enemies: It is on a supposition that our American Governors shall be honest, that all the good qualities of this Government are founded: But its defective, and imperfect construction, puts it in their power to perpetrate the worst of mischiefs, should they be bad men: And, Sir, would not all the world, from the Eastern to the Western hemisphere, blame our distracted folly in resting our rights upon the contingency of our rulers being good or bad. Shew me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty? I say that the loss of that dearest privilege has ever followed with absolute certainty, every such mad attempt.

If your American chief, be a man of ambition, and abilities, how easy is it for him to render himself absolute: The army is in his hands, and, if he be a man of address, it will be attached to him; and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design; and, Sir, will the American spirit solely relieve you when this happens? I would rather infinitely, and I am sure most of this Convention are of the same opinion, have a King, Lords, and Commons, than a Government so replete with such insupportable evils. If we make a King, we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them: But the President, in the field, at the head of his
army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck from under the galling yoke. I cannot with patience, think of this idea. If ever he violates the laws, one of two things will happen: He shall come at the head of his army to carry every thing before him; or, he will give bail, or do what Mr. Chief Justice will order him. If he be guilty, will not the recollection of his crimes teach him to make one bold push for the American throne? Will not the immense difference between being master of every thing, and being ignominiously tried and punished, powerfully excite him to make this bold push? But, Sir, where is the existing force to punish him? Can he not at the head of his army beat down every opposition? Away with your President, we shall have a King: The army will salute him Monarch; your militia will leave you and assist in making him King, and fight against you: And what have you to oppose this force? What will then become of you and your rights? Will not absolute despotism ensue?

Critical Thinking Questions

1. Express the following passages in your own words:

   a. “I have the highest veneration of those Gentlemen,—but, Sir, give me leave to demand, what right had they to say, We, the People. My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask who authorized them to speak the language of, We, the People, instead of We, the States? States are the characteristics, and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States.”

   b. “[I]t squints towards monarchy.”

   c. “Shew me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty? I say that the loss of that dearest privilege has ever followed with absolute certainty, every such mad attempt.”

   d. “If we make a King, we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them: But the President, in the field, at the head of his army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck from under the galling yoke.”

2. To what extent do you agree with Patrick Henry’s concerns about the Constitution? Be prepared to explain your answer.
Handout A: State-by-State Ratification Summary

**Directions:** Use the following table as a reference in analyzing the constitutional ratification process.

<table>
<thead>
<tr>
<th>States in Order of Ratification</th>
<th>Date of Ratification</th>
<th>Convention Vote For Ratification</th>
<th>Convention Vote Against Ratification</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delaware</td>
<td>Dec. 7, 1787</td>
<td>Unanimous</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Dec. 12, 1787</td>
<td>46</td>
<td>23</td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>Dec. 18, 1787</td>
<td>Unanimous</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Georgia</td>
<td>Jan. 2, 1788</td>
<td>Unanimous</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
<td>Jan. 8, 1788</td>
<td>128</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Massachusetts (including Maine)</td>
<td>Feb. 6, 1788</td>
<td>187</td>
<td>168</td>
<td>Ratified based on proposition that amendments would be considered in the First Congress; 9 amendments proposed.</td>
</tr>
<tr>
<td>Maryland</td>
<td>Apr. 28, 1788</td>
<td>63</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>South Carolina</td>
<td>May 23, 1788</td>
<td>149</td>
<td>73</td>
<td>5 declarations &amp; resolves proposed</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>June 21, 1788</td>
<td>57</td>
<td>46</td>
<td>12 amendments proposed</td>
</tr>
<tr>
<td>Virginia</td>
<td>June 26, 1788</td>
<td>89</td>
<td>79</td>
<td>20 amendments and an additional 20 items constituting a bill of rights proposed</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>Constitution declared ratified July 2, 1788.</strong></td>
</tr>
<tr>
<td>States in Order of Ratification</td>
<td>Date of Ratification</td>
<td>Convention Vote For Ratification</td>
<td>Convention Vote Against Ratification</td>
<td>Notes</td>
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<tr>
<td>New York</td>
<td>July 26, 1788</td>
<td>30</td>
<td>27</td>
<td>31 amendments and an additional 25 items in a bill of rights proposed</td>
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<tr>
<td>North Carolina</td>
<td>Nov. 21, 1789</td>
<td>195</td>
<td>77</td>
<td>Ratified only after the First Congress sent twelve amendment proposals to the states for ratification. 26 amendments and an additional 20 items constituting a bill of rights proposed</td>
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<td>Rhode Island</td>
<td>May 29, 1790</td>
<td>34</td>
<td>32</td>
<td>Ratified only after the First Congress sent twelve amendment proposals to the states for ratification. 21 amendments and an additional 18 items constituting a bill of rights proposed</td>
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Handout B: Excerpts, Madison’s Speech in Congress on Amendments to the Constitution June 8, 1789

Background: Madison went through several phases in his attitude about a bill of rights. At the Constitutional Convention and in the Federalist Papers, he maintained the position that individual rights were fully protected by the Constitution as it stood, and a bill of rights was unnecessary—or maybe even dangerous. However, by the summer of 1789, it was clear that, even though the Constitution had been ratified by all but two states (North Carolina and Rhode Island) a bill of rights was necessary to gain the people's trust in the new system of government. Several states had ratified the Constitution based on the Federalists’ promise that one of the first acts of business in the First Congress would be to draw up a series of constitutional amendments to further safeguard individual liberties. Madison, having played such a pivotal role in every stage of the development of the Constitution, now led the effort to draft a bill of rights. He had promised his constituents in Virginia that, if he were elected to the House of Representatives, he would use his influence to produce a bill of rights, so he had a commitment to keep to those who elected him. He led the effort for an additional reason, however. In the Constitution’s state-by-state ratification process, two main kinds of proposed amendments had emerged. One category of amendments would have significantly altered the structure and operation of the new national government. The second category consisted of guarantees of individual rights and liberties. Madison wanted to focus Congress’s efforts on the latter so that the former category of proposed amendments would die of neglect. In his speech on June 8, 1789, he presented for Congress’s consideration his list of thirty-nine points that he recommended to be inserted at various points in the Constitution. For more information about these 39 specific rights and their backgrounds, please see Gordon Lloyd’s detailed tables here: http://teachingamericanhistory.org/bor/conventions-chart

Directions: Madison’s speech (with introductory and concluding sections edited for length) is provided below. You will use the Amendments section (which is provided in full) to trace the development of the content of the Bill of Rights, using the succeeding handouts. Use highlighting and annotations as appropriate to analyze Madison’s proposals in the First Congress. (Paragraphs are numbered in this excerpt to simplify annotation and discussion.)

Madison’s introduction (excerpts)

1. “...The applications for amendments come from a very respectable number of constituents, and it is certainly proper for Congress to consider the subject, in order to quiet that anxiety which prevails in the public mind…”

2. “It will be a desirable thing to extinguish from the bosom of every member of the community any apprehensions, that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled. And if there are amendments desired, of such a
nature as will not injure the constitution, and they can be engrafted so as to give satisfaction to the doubting part of our fellow citizens; the friends of the federal government will evince that spirit of deference and concession for which they have hitherto been distinguished.”

3. “...I should be unwilling to see a door opened for a re-consideration of the whole structure of the government, for a re-consideration of the principles and the substance of the powers given; because I doubt, if such a door was opened, if we should be very likely to stop at that point which would be safe to the government itself: But I do wish to see a door opened to consider, so far as to incorporate those provisions for the security of rights, against which I believe no serious objection has been made by any class of our constituents, such as would be likely to meet with the concurrence of two-thirds of both houses, and the approbation of three-fourths of the state legislatures...”

4. “The amendments which have occurred to me, proper to be recommended by congress to the state legislatures, are these:”
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<th>A. References to ideas found in prior historical documents, such as Magna Carta, English Bill of Rights, Declaration of Independence, etc.</th>
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<td>B. Madison’s proposed amendments</td>
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<td>C. Included in Amendments approved by the House of Representatives (show Article number)</td>
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<td>D. Included in Amendments approved by the Senate (show Article number)</td>
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<td>E. Included in final Bill of Rights ratified by the states (show Amendment number)</td>
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<td>5. “First. That there be prefixed to the constitution a declaration That all power is originally vested in, and consequently derived from the people.”</td>
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<td>6. “That government is instituted, and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety.”</td>
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<td>7. “That the people have an indubitable, unalienable, and indefeasible right to reform or change their government, whenever it be found adverse or inadequate to the purposes of its institution.”</td>
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<td>8. “Secondly. That in article 1st. section 2, clause 3, these words be struck out, to wit, ‘The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative, and until such enumeration shall be made.’ And that in place thereof be inserted these words, to wit, ‘After the first actual enumeration, there shall be one representative for every thirty thousand, until the number amount to _________ after which the proportion shall be so regulated by congress, that the number shall never be less than _________ nor more than _________ but each state shall after the first enumeration, have at least two representatives; and prior thereto.”</td>
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<td>9. “Thirdly. That in article 1st, section 6, clause 1, there be added to the end of the first sentence, these words, to wit, ‘But no law varying the compensation last ascertained shall operate before the next ensuing election of representatives.”</td>
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10. “Fourthly. That in article 1st, section 9, between clauses 3 and 4, be inserted these clauses, to wit, The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext infringed.”

11. “The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.”

12. “The people shall not be restrained from peaceably assembling and consulting for their common good, nor from applying to the legislature by petitions, or remonstrances for redress of their grievances.”

13. “The right of the people to keep and bear arms shall not be infringed; a well armed, and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms, shall be compelled to render military service in person.”

14. “No soldier shall in time of peace be quartered in any house without the consent of the owner; nor at any time, but in a manner warranted by law.”
A. References to ideas found in prior historical documents, such as Magna Carta, English Bill of Rights, Declaration of Independence, etc.

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<th>B. Madison’s proposed amendments</th>
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<td>15</td>
<td>“No person shall be subject, except in cases of impeachment, to more than one punishment, or one trial for the same office; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without a just compensation.”</td>
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<td>16</td>
<td>“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”</td>
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<td>17</td>
<td>“The rights of the people to be secured in their persons, their houses, their papers, and their other property from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.”</td>
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<td>18</td>
<td>“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the cause and nature of the accusation, to be confronted with his accusers, and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.”</td>
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<td>19</td>
<td>“The exceptions here or elsewhere in the constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people; or as to enlarge the powers delegated by the constitution; but either as actual limitations of such powers, or as inserted merely for greater caution.”</td>
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<td>A. References to ideas found in prior historical documents, such as Magna Carta, English Bill of Rights, Declaration of Independence, etc.</td>
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<td>20.</td>
<td>“Fifthly. That in article 1st, section 10, between clauses 1 and 2, be inserted this clause, to wit:”</td>
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<td>21.</td>
<td>“No state shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.”</td>
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<td>22.</td>
<td>“Sixthly. That article 3d, section 2, be annexed to the end of clause 2nd, these words to wit: but no appeal to such court shall be allowed where the value in controversy shall not amount to __________ dollars: nor shall any fact triable by jury, according to the course of common law, be otherwise re-examinable than may consist with the principles of common law.”</td>
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<td>23.</td>
<td>“Seventhly. That in article 3d, section 2, the third clause be struck out, and in its place be inserted the clauses following, to wit:”</td>
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<td>24.</td>
<td>“The trial of all crimes (except in cases of impeachments, and cases arising in the land or naval forces, or the militia when on actual service in time of war or public danger) shall be by an impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites; and in all crimes punishable with loss of life or member, presentment or indictment by a grand jury, shall be an essential preliminary, provided that in cases of crimes committed within any county which may be in possession of an enemy, or in which a general insurrection may prevail, the trial may by law be authorized in some other county of the same state, as near as may be to the seat of the offence.”</td>
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<td>A. References to ideas found in prior historical documents, such as Magna Carta, English Bill of Rights, Declaration of Independence, etc.</td>
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<td>25. “In cases of crimes committed not within any county, the trial may by law be in such county as the laws shall have prescribed. In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate.”</td>
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<td>26. “Eighthly. That immediately after article 6th, be inserted, as article 7th, the clauses following, to wit:”</td>
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<td>27. “The powers delegated by this constitution, are appropriated to the departments to which they are respectively distributed: so that the legislative department shall never exercise the powers vested in the executive or judicial; nor the executive exercise the powers vested in the legislative or judicial; nor the judicial exercise the powers vested in the legislative or executive departments.”</td>
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<td>28. “The powers not delegated by this constitution, nor prohibited by it to the states, are reserved to the States respectively.”</td>
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<td>29. “Ninthly. That article 7th, be numbered as article 8th...”</td>
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Madison’s conclusion and further commentary (Excerpts)

29. “...[W]hatever may be the form which the several states have adopted in making declarations in favor of particular rights, the great object in view is to limit and qualify the powers of government, by excepting out of the grant of power those cases in which the government ought not to act, or to act only in a particular mode. They point these exceptions sometimes against the abuse of the executive power, sometimes against the legislative, and, in some cases, against the community itself; or, in other words, against the majority in favor of the minority.”

30. “In our government it is, perhaps, less necessary to guard against the abuse in the executive department than any other; because it is not the stronger branch of the system, but the weaker: It therefore must be leveled against the legislative, for it is the most powerful, and most likely to be abused, because it is under the least control; hence, so far as a declaration of rights can tend to prevent the exercise of undue power, it cannot be doubted but such declaration is proper. But I confess that I do conceive, that in a government modified like this of the United States, the great danger lies rather in the abuse of the community than in the legislative body. The prescriptions in favor of liberty, ought to be leveled against that quarter where the greatest danger lies, namely, that which possesses the highest prerogative of power: But this is not found in either the executive or legislative departments of government, but in the body of the people, operating by the majority against the minority.”

31. “It may be thought all paper barriers against the power of the community, are too weak to be worthy of attention. I am sensible they are not so strong as to satisfy gentlemen of every description who have seen and examined thoroughly the texture of such a defense; yet, as they have a tendency to impress some degree of respect for them, to establish the public opinion in their favor, and rouse the attention of the whole community, it may be one mean to control the majority from those acts to which they might be otherwise inclined...”

32. “It is true, there are a few particular states in which some of the most valuable articles have not, at one time or other, been violated; but does it not follow but they may have, to a certain degree, a salutary effect against the abuse of power. If they are incorporated into the constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the constitution by the declaration of rights. Beside this security, there is a great probability that such a declaration in the federal system would be enforced; because the state legislatures will jealously and closely watch the operation of this government, and be able to resist with more effect every assumption of power than any other power on earth can do; and the greatest opponents to a federal government admit the state legislatures to be sure guardians of the people’s liberty. I conclude from this view of the subject, that it will be proper in itself, and highly politic, for the tranquility of the public mind, and the stability of the government, that we should offer something, in the form I have proposed, to be incorporated in the system of government, as a declaration of the rights of the people...”
33. “These are the points on which I wish to see a revision of the constitution take place. How far they will accord with the sense of this body, I cannot take upon me absolutely to determine; but I believe every gentlemen will readily admit that nothing is in contemplation, so far as I have mentioned, that can endanger the beauty of the government in any one important feature, even in the eyes of its most sanguine admirers. I have proposed nothing that does not appear to me as proper in itself, or eligible as patronized by a respectable number of our fellow citizens; and if we can make the constitution better in the opinion of those who are opposed to it, without weakening its frame, or abridging its usefulness, in the judgment of those who are attached to it, we act the part of wise and liberal men to make such alterations as shall produce that effect...”

Critical Thinking Questions

1. Restate paragraph 3 in your own words.

2. According to paragraph 29, what was the “great object” of this effort and why was it important?

3. Bills of rights historically limited the power of kings, or the executive branch. According to Madison in paragraph 30, which of the following posed the greatest danger to rights in the American system? List them in order from most dangerous to least dangerous.

   - executive department
   - legislative department
   - the majority acting against the rights of the minority

4. According to paragraphs 31 and 32, why are “paper barriers” useful?

5. In paragraph 33, Madison wrote, “nothing is in contemplation, so far as I have mentioned, that can endanger the beauty of the government in any one important feature, even in the eyes of its most sanguine admirers.” What do you think he meant by the “beauty of the government”?
Handout C: Amendments Approved by the House of Representatives August 24, 1789

Background: Though Madison wanted his amendments to be inserted into the text of the Constitution, and listed them to match the order of the constitutional articles they amended, the House rejected that approach and added the amendments as a separate list. Below is the list of the 17 proposals approved by the House.

Directions: Compare this list with the amendments that Madison proposed in his June 8 speech (Handout B). On that handout, put a check in Column C to show each of Madison’s proposed amendments that was approved by the House of Representatives. Also show the Article number on the Handout B table. Or, write NA if not approved.

In the House of Representatives,
Monday, 24th August, 1789,

RESOLVED, by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses deeming it necessary, That the following Articles be proposed to the Legislatures of the several States, as Amendments to the Constitution of the United States, all or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes as part of the said Constitution--Viz.

ARTICLES in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

ARTICLE THE FIRST. After the first enumeration, required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred, after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor less than one Representative for every fifty thousand persons.

ARTICLE THE SECOND. No law varying the compensation to the members of Congress, shall take effect, until an election of Representatives shall have intervened.

ARTICLE THE THIRD. Congress shall make no law establishing religion or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed.

ARTICLE THE FOURTH. The Freedom of Speech, and of the Press, and the right of the People peaceably to assemble, and consult for their common good, and to apply to the Government for a redress of grievances, shall not be infringed.

ARTICLE THE FIFTH. A well regulated militia, composed of the body of the People, being the best security of a free State, the right of the People to keep and bear arms, shall not be
infringed, but no one religiously scrupulous of bearing arms, shall be compelled to render military service in person.

ARTICLE THE SIXTH. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE THE SEVENTH. The right of the People to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE THE EIGHTH. No person shall be subject, except in case of impeachment, to more than one trial, or one punishment for the same offense, nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE THE NINTH. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE THE TENTH. The trial of all crimes (except in cases of impeachment, and in cases arising in the land or naval forces, or in the militia when in actual service in time of War or public danger) shall be by an Impartial Jury of the Vicinage, with the requisite of unanimity for conviction, the right of challenge, and other accustomed requisites; and no person shall be held to answer for a capital, or otherways infamous crime, unless on a presentment or indictment by a Grand Jury; but if a crime be committed in a place in the possession of an enemy, or in which an insurrection may prevail, the indictment and trial may by law be authorized in some other place within the same State.

ARTICLE THE ELEVENTH. No appeal to the Supreme Court of the United States, shall be allowed, where the value in controversy shall not amount to one thousand dollars, nor shall any fact, triable by a Jury according to the course of the common law, be otherwise re-examinable, than according to the rules of common law.

ARTICLE THE TWELFTH. In suits at common law, the right of trial by Jury shall be preserved.

ARTICLE THE THIRTEENTH. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE THE FOURTEENTH. No State shall infringe the right of trial by Jury in criminal cases, nor the rights of conscience, nor the freedom of speech, or of the press.

ARTICLE THE FIFTEENTH. The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE THE SIXTEENTH. The powers delegated by the Constitution to the government of the United States, shall be exercised as therein appropriated, so that the Legislative shall never exercise the powers vested in the Executive or Judicial; nor the Executive the powers vested in the Legislative or Judicial; nor the Judicial the powers vested in the Legislative or Executive.

ARTICLE THE SEVENTEENTH. The powers not delegated by the Constitution, nor prohibited by it, to the States, are reserved to the States respectively...
Handout D: Amendments Approved by the Senate, September 25, 1789

Directions: Compare this list to Handout B. Put a check in Column D of that handout to show each of Madison’s proposed amendments that was approved by the Senate and sent out to the states. Also include the Article number on the Handout B table.

THE Conventions of a Number of the States having, at the Time of their adopting the Constitution, expressed a Desire, in Order to prevent Misconstruction or Abuse of its Powers, that further declaratory and restrictive Clauses should be added: And as extending the Ground of public Confidence in the Government will best insure the beneficent Ends of its Institution,

RESOLVED, by the Senate, and House of Representatives of the United States of America, in Congress assembled, Two Thirds of both Houses concurring, That the following Articles be proposed to the Legislatures of the several States as Amendments to the Constitution of the United States: All, or any of, which Articles, when ratified by Three-Fourths of the said Legislatures, to be valid to all Intents and Purposes as Part of the said Constitution, viz.

ARTICLES in Addition to, and Amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the Fifth Article of the original Constitution.

Article the First. --After the First Enumeration, required by the First Article of the Constitution, there shall be One Representative for every Thirty Thousand, until the Number shall amount to One Hundred; after which the Proportion shall be so regulated by Congress that there shall not be less than One Hundred Representatives, nor less than One Representative for every Forty Thousand Persons, until the Number of Representatives shall amount to Two Hundred, after which the Proportion shall be so regulated by Congress, that there shall not be less than Two Hundred Representatives, nor more than one Representative for every Fifty Thousand Persons.

Article the Second. --No Law varying the Compensations for the Services of the Senators and Representatives shall take Effect, until an Election of Representatives shall have intervened.

Article the Third. --Congress shall make no Law respecting the Establishment of Religion, or prohibiting the free Exercise thereof; or abridging the Freedom of Speech, or of the Press, or to the Right of the People peaceably to assemble, and to petition the Government for a Redress of Grievances.

Article the Fourth. --A well regulated Militia being necessary to the Security of a free State, the Right of the People to keep and bear Arms shall not be infringed.

Article the Fifth. --No Soldier shall, in Time of Peace, be quartered in any House without the Consent of the Owner, nor, in Time of War, but in a Manner to be prescribed by Law.

Article the Sixth. --The Right of the People to...
be secure in their Persons, Houses, Papers, and Effects, against unreasonable Searches and Seizures shall not be violated, and no Warrant shall issue, but upon probable Cause supported by Oath, or Affirmation, and particularly describing the Place to be searched, and the Persons or Things to be seized.

Article the Seventh. --No Person shall be held to answer for a Capital, or otherwise Infamous Crime, unless on a Presentment or Indictment of a Grand Jury; except in Cases arising in the Land or Naval Forces; or in the Militia, when in actual Service in Time of War or public Danger: Nor shall any Person be subject for the same Offence to be Twice put in Jeopardy of Life or Limb; nor shall be compelled, in any Criminal Case, to be a Witness against himself; nor be deprived of Life, Liberty or Property, without due Process of Law: Nor shall private Property be taken for public Use without just Compensation.

Article the Eighth. --In all Criminal Prosecutions, the accused shall enjoy the Right to a speedy and public Trial, by an impartial Jury of the State and District wherein the Crime shall have been committed, which District shall have been previously ascertained by Law; and to be informed of the Nature and Cause of the Accusation; to be confronted with the Witnesses against him; to have compulsory Process for obtaining Witnesses in his Favor; and to have the Assistance of Counsel for his Defense.

Article the Ninth. --In Suits at Common Law, where the Value in Controversy shall exceed Twenty Dollars, the Right of Trial by Jury shall be preserved, and no Fact tried by a Jury shall be otherwise re-examined in any Court of the United States, than according to the Rules of the Common Law.

Article the Tenth. --Excessive Bail shall not be required; nor excessive Fines imposed, nor cruel and unusual Punishments inflicted.

Article the Eleventh. --The Enumeration in the Constitution of certain Rights shall not be construed to deny or disparage others retained by the People.

Article the Twelfth. --The Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the People.

FREDERICK AUGUSTUS MUHLENBERG, Speaker of the House of Representatives. JOHN ADAMS, Vice-President of the United States, and President of the Senate.
Handout E: The United States Bill of Rights, December 15, 1791

**ARTICLE I** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**ARTICLE II** A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

**ARTICLE III** No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

**ARTICLE IV** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**ARTICLE V** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**ARTICLE VI** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

**ARTICLE VII** In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

**ARTICLE VIII** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
Critical Thinking Questions

1. Which of Madison’s proposed amendments, if any, do you think should have been adopted as part of the final Bill of Rights?

2. What other amendments, if any, do you think should have been adopted?

3. The first two of the amendments sent to the states for ratification in September of 1789 were not ratified by the states.
   a. To what extent do you think the first one, (quoted below) would be a good idea? Congress set the size of the House at 435 in The Apportionment Act of 1911.
      i. Article the First. --After the First Enumeration, required by the First Article of the Constitution, there shall be One Representative for every Thirty Thousand, until the Number shall amount to One Hundred; after which the Proportion shall be so regulated by Congress that there shall not be less than One Hundred Representatives, nor less than One Representative for every Forty Thousand Persons, until the Number of Representatives shall amount to Two Hundred, after which the Proportion shall be so regulated by Congress, that there shall not be less than Two Hundred Representatives, nor more than one Representative for every Fifty Thousand Persons.
   b. If the formula of one representative for every 50,000 persons were still in effect today, how large would the House of Representatives be?

4. Compare the second amendment sent to the states in September of 1789 to the Twenty-seventh Amendment, which was ratified in 1992.
   a. Article the Second. – No Law varying the Compensations for the Services of the Senators and Representatives shall take Effect, until an Election of Representatives shall have intervened.
   b. Amendment 27, ratified 1992 – No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

See Handout F for the story of Amendment 27.

5. In paragraphs 5, 6, and 7 of Madison’s proposed amendments are points that the House of Representatives did not approve as constitutional amendments. What do these proposals have in common and how are they different from the proposals that the House approved?

6. How is the proposition in paragraph 21 different from the other guarantees?

7. The House of Representatives approved 17 amendments and the Senate approved 12. Generally speaking, is that because the Senate approved fewer rights than the House, or because the rights were combined differently?

(Used by author’s permission)

The modern story of the ratification of the compensation amendment begins with Gregory D. Watson, an aide to Texas state senator Ric Williamson. Convinced that the amendment was still “live,” Watson waged a lonely ten-year campaign to add it to the Constitution despite the conventional wisdom—shared by most politicians, historians, and legal scholars—that the 1789 proposal was a dead letter.

In 1982, while a sophomore majoring in economics at the University of Texas-Austin, Watson was looking for a paper topic for a government course; he discovered the unratified compensation amendment of 1789, which seemed to him to have abiding relevance. Watson confirmed the ratifications by Maryland, North Carolina, South Carolina, Delaware, Vermont, and Virginia that occurred between 1789 and 1791, when the Bill of Rights was added to the Constitution and the compensation amendment seemingly passed away. But Watson also discovered Ohio’s action on the amendment in 1873. He concluded that the 1789 amendment was still validly before the states principally because, unlike most recent proposed amendments, it has no internal time limit. Intrigued, he wrote a paper reporting and analyzing his discovery and urging that the amendment be adopted. But Watson received only a “C” from his instructor, who told him that the amendment was a dead letter and never would become part of the Constitution.

Despite the cold reception his paper received, Watson began and pursued a solitary, self-financed quest to revive the compensation amendment, encouraging state legislators throughout the United States to work for its ratification. Beginning with Maine in 1983 and Colorado in 1984, the states gradually responded to his arguments, and many of those legislatures that did ratify the amendment cited his point that the lack of a time limit confirms the amendment’s “live” status...

On May 7, 1992, the legislatures of Michigan and New Jersey raced to supply the needed thirty-eighth ratification. Michigan acted first; New Jersey’s legislators, disappointed that they missed the honor of putting the amendment into the Constitution, nonetheless ratified the amendment as the thirty-ninth state, overturning their predecessors’ decision in 1789 to reject it.
Handout A: The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
Handout B: The Alien and Sedition Acts

The Alien and Sedition Acts consisted of four laws passed by the Federalist-controlled Fifth Congress. Two of the four are: An Act Respecting Alien Enemies (Alien Act) and An Act for the Punishment of Certain Crimes against the United States (Sedition Act).

Directions: Answer the questions in the right margin. Then, in each section of text, underline the phrases to which the First Amendment (Handout A) is relevant.

An Act Respecting Alien Enemies

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever there shall be a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion shall be perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President of the United States shall make public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies.

And the President of the United States shall be, and he is hereby authorized, in any event, as aforesaid, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens who shall become liable, as aforesaid; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those, who, not being permitted to reside within the United States, shall refuse or neglect to depart therefrom; and to establish any other regulations which shall be found necessary in the premises and for the public safety...
SEC. 2. And be it further enacted, That after any proclamation shall be made as aforesaid, it shall be the duty of the several courts of the United States, and of each state, having criminal jurisdiction, and of the several judges and justices of the courts of the United States, and they shall be, and are hereby respectively, authorized upon complaint, against any alien or alien enemies, as aforesaid, who shall be resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President of the United States shall and may establish in the premises, to cause such alien or aliens to be duly apprehended and convened before such court, judge or justice; and after a full examination and hearing on such complaint. and sufficient cause therefor appearing, shall and may order such alien or aliens to be removed out of the territory of the United States, or to give sureties of their good behaviour, or to be otherwise restrained, conformably to the proclamation or regulations which shall and may be established as aforesaid, and may imprison, or otherwise secure such alien or aliens, until the order which shall and may be made, as aforesaid, shall be performed:

SEC. 3. And be it further enacted, That it shall be the duty of the marshal of the district in which any alien enemy shall be apprehended, who by the President of the United States, or by order of any court, judge or justice, as aforesaid, shall be required to depart, and to be removed, as aforesaid, to provide therefor, and to execute such order, by himself or his deputy, or other discreet person or persons to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President of the United States, or of the court, judge or justice ordering the same, as the case may be.

APPROVED, July 6, 1798.
Sedition Act

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty, and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

SEC. 2. And be it farther enacted, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against United States, their people or government, then such person, being thereof convicted before
any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

SEC. 3. And be it further enacted and declared, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the truth of the matter contained in Republication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

SEC. 4. And be it further enacted, That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer: Provided, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.

APPROVED, July 14, 1798.

What could be the consequences for the accused?

How long would this law be in effect?
Handout C: The Acts and the First Amendment

**First Amendment:** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

**Directions:** In the first column, write a phrase to summarize that section of the Act. In the second column, note whether – and if so, how – the First Amendment applies to that section of the Act.

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<th>Act Respecting Alien Enemies</th>
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Do you believe these two acts were constitutional? Why or why not?

_______________________________________________________________________________________________________________
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RESOLVED, That the General Assembly of Virginia, doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this State, against every aggression either foreign or domestic, and that they will support the government of the United States in all measures warranted by the former.

That this assembly most solemnly declares a warm attachment to the Union of the States, to maintain which it pledges all its powers; and that for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them, can alone secure its existence and the public happiness.

That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

That the General Assembly doth also express its deep regret, that a spirit has in sundry instances, been manifested by the federal government, to enlarge its powers by forced constructions of the constitutional charter which defines them; and that implications have appeared of a design to expound certain general phrases (which having been copied from the very limited grant of power, in the former articles of confederation were the less liable to be misconstrued) so as to destroy the meaning and effect, of the particular enumeration which necessarily explains and limits the general phrases; and so as to consolidate the states by degrees, into one sovereignty, the obvious tendency and inevitable consequence of which would be, to transform the present republican system of the United States, into an absolute, or at best a mixed monarchy.

That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution, in the two late cases of the “Alien and Sedition Acts” passed at the last session of Congress; the first of which exercises a power no where delegated to the federal government, and which by uniting legislative and judicial powers to those of executive, subverts the general principles of free government; as well as the particular organization, and positive provisions of the federal constitution; and the other of which acts, exercises in like manner, a power not delegated by the constitution, but on the contrary, expressly and positively forbidden by one of the amendments thereto; a power, which more than any other, ought to produce universal alarm, because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed, the only
effectual guardian of every other right.

That this state having by its Convention, which ratified the federal Constitution, expressly declared, that among other essential rights, “the Liberty of Conscience and of the Press cannot be cancelled, abridged, restrained, or modified by any authority of the United States,” and from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, having with other states, recommended an amendment for that purpose, which amendment was, in due time, annexed to the Constitution; it would mark a reproachable inconsistency, and criminal degeneracy, if an indifference were now shewn, to the most palpable violation of one of the Rights, thus declared and secured; and to the establishment of a precedent which may be fatal to the other.

That the good people of this commonwealth, having ever felt, and continuing to feel, the most sincere affection for their brethren of the other states; the truest anxiety for establishing and perpetuating the union of all; and the most scrupulous fidelity to that constitution, which is the pledge of mutual friendship, and the instrument of mutual happiness; the General Assembly doth solemnly appeal to the like dispositions of the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid, are unconstitutional; and that the necessary and proper measures will be taken by each, for co-operating with this state, in maintaining the Authorities, Rights, and Liberties, referred to the States respectively, or to the people.

That the Governor be desired, to transmit a copy of the foregoing Resolutions to the executive authority of each of the other states, with a request that the same may be communicated to the Legislature thereof; and that a copy be furnished to each of the Senators and Representatives representing this state in the Congress of the United States.

Agreed to by the Senate, December 24, 1798.

Critical Thinking Questions

1. Why do the Virginia Resolutions open with a statement about defending the Constitution of the United States and of this State?

2. What is meant by “it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union” (paragraph 2)?

3. What is meant by “the progress of the evil” (paragraph 3)?

4. According to these resolutions, when do states have a right and duty to intervene to “arrest the progress of the evil”?

5. What are the writer’s concerns about the powers of the federal government?

6. What is the Virginia Resolutions’ concluding statement about the validity of the Alien and Sedition Acts? Who is making this declaration?
Handout E: Kentucky Resolutions (1798)

Resolutions 2, 3, and 8

2. Resolved, That the Constitution of the United States, having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies, and felonies committed on the high seas, and offenses against the law of nations, and no other crimes, whatsoever; and it being true as a general principle, and one of the amendments to the Constitution having also declared, that “the powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively, or to the people,” therefore the act of Congress, passed on the 14th day of July, 1798, and intituled “An Act in addition to the act intituled An Act for the punishment of certain crimes against the United States,” as also the act passed by them on the — day of June, 1798, intituled “An Act to punish frauds committed on the bank of the United States,” (and all their other acts which assume to create, define, or punish crimes, other than those so enumerated in the Constitution,) are altogether void, and of no force; and that the power to create, define, and punish such other crimes is reserved, and, of right, appertains solely and exclusively to the respective States, each within its own territory.

3. Resolved, That it is true as a general principle, and is also expressly declared by one of the amendments to the Constitutions, that “the powers not delegated to the United States by the Constitution, our prohibited by it to the States, are reserved to the States respectively, or to the people”; and that no power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States by the Constitution, nor prohibited by it to the States, all lawful powers respecting the same did of right remain, and were reserved to the States or the people: that thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use should be tolerated, rather than the use be destroyed. And thus also they guarded against all abridgment by the United States of the freedom of religious opinions and exercises, and retained to themselves the right of protecting the same, as this State, by a law passed on the general demand of its citizens, had already protected them from all human restraint or interference. And that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution, which expressly declares, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press”: thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press: insomuch, that whatever violated either, throws down the sanctuary which covers the others, arid that libels, falsehood, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals. That, therefore, the act of Congress of the United States, passed on the 14th day of July, 1798, intituled “An Act in addition to the act intituled An Act for the punishment of certain crimes
against the United States,” which does abridge the freedom of the press, is not law, but is altogether void, and of no force.

8th. Resolved, ... it does also believe, that to take from the States all the powers of self-government and transfer them to a general and consolidated government, without regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness or prosperity of these States; and that therefore this commonwealth is determined, as it doubts not its co-States are, to submit to undelegated, and consequently unlimited powers in no man, or body of men on earth: that in cases of an abuse of the delegated powers, the members of the general government, being chosen by the people, a change by the people would be the constitutional remedy; but, where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact, (casus non fœderis) to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them...

Critical Thinking Questions

1. Write a single-statement summary of each of the Kentucky Resolutions 2, 3, and 8 (or of the section that your teacher assigns to you).
2. In Resolution 2, which of the first ten amendments to the U.S. Constitution is referenced? Why?
3. Why, in Resolution 3, is the Act declared void?
4. In Resolution 8, when is nullification “the rightful remedy”?
5. Define nullification as the term is used in this context.
### Handout A: Opinion Check-In

**Directions:** Rate your agreement with each statement.

1. I understand the principle of “equal justice/protection under the law.”
   
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   Completely Disagree  Completely Agree

2. When judging how well a country exemplifies the principle of equality under law, it should be judged against an ideal.

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   Completely Disagree  Completely Agree

3. When judging how well a country exemplifies the principle of equality under law, it should be judged against how well other countries do so.

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   Completely Disagree  Completely Agree

4. Since all people are created equal, all people should have equal outcomes.

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   Completely Disagree  Completely Agree

5. “Equal protection of the law” means treating everyone the same.

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   Completely Disagree  Completely Agree


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   Completely Disagree  Completely Agree
Handout B: The Tenth Amendment and Reconstruction Amendments

The Tenth Amendment, 1791
The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

1. Restate the Tenth Amendment in your own words.

The Thirteenth Amendment, 1865
Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

1. What does the Thirteenth Amendment guarantee in every state?
2. Restate Section 2 in your own words. Describe the relationship between Section 2 of this document and the Tenth Amendment.

Section of The Fourteenth Amendment, 1868
Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws....

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

1. What does the Fourteenth Amendment guarantee to residents of every state?
2. How does Section 5 relate to the meaning of the Tenth Amendment?

The Fifteenth Amendment, 1870
Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

1. What does the Fifteenth Amendment guarantee in every state?
2. How does Section 2 relate to the meaning of the Tenth Amendment?
Handout C: Court Cases

Slaughterhouse Cases – Background

Only five years after the Fourteenth Amendment was ratified, the Supreme Court took the opportunity to interpret it. Upstream from New Orleans, butchers often dumped animal processing waste into backwaters of the Mississippi River. Among the ensuing problems was repeated outbreaks of cholera in the city. In 1869, the Louisiana legislature required the city to create a corporation that centralized slaughterhouse operations downstream, resulting in a monopoly. The Butchers’ Benevolent Association sued to stop this takeover of their business, referring to the three clauses of the Fourteenth Amendment. They argued that they had been deprived of their right to exercise their trade and earn an honest living. The question before the Court was whether the creation of the monopoly violated the Thirteenth and Fourteenth Amendments. In a 5-4 decision, the Court majority focused its ruling on only the Privileges or Immunities Clause and interpreted it narrowly, applying it to national, but not state, citizenship. Justice Samuel Freeman Miller wrote in the majority opinion that the Fourteenth Amendment did not restrict the police powers of the state. The right to earn a living in one’s chosen trade was not included in the Fourteenth Amendment’s protections.

*Slaughterhouse Cases (1873) – Excerpt from Majority Opinion, Justice Miller*

...We venture to suggest some [privileges and immunities] which owe their existence to the Federal government, its National character, its Constitution, or its laws.

...It is said to be the right of the citizen of this great country, protected by implied guarantees of its Constitution, “to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has the right of free access to its seaports, through which all operations of foreign commerce are conducted, to the subtreasuries, land offices, and courts of justice in the several States.”

Another privilege of a citizen of the United States is to demand the care and protection of the Federal government over his life, liberty, and property when on the high seas or within the jurisdiction of a foreign government. ...The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of habeas corpus, are rights of the citizen guaranteed by the Federal Constitution. The right to use the navigable waters of the United States, however they may penetrate the territory of the several States, all rights secured to our citizens by treaties with foreign nations, are dependent upon citizenship of the United States, and not citizenship of a State...

1. Did this decision define the “privileges or immunities” of U.S. citizens narrowly or broadly? Explain.

2. What effect did this have on the overall interpretation of the Fourteenth Amendment?
Handout C: Page 2

Civil Rights Cases (1883)

[Federal civil rights] legislation cannot properly cover the whole domain of rights appertaining to life, liberty, and property, defining them and providing for their vindication. That would ... make congress take the place of the state legislatures and to supersede them.

It is absurd to affirm that, because the rights of life, liberty, and property ... are by the [Fourteenth] Amendment sought to be protected against invasion on the part of the state without due process of law, Congress may, therefore, provide due process of law for their vindication in every case; and that, because the denial by a state to any persons of the equal protection of the laws is prohibited by the amendment, therefore congress may establish laws for their equal protection.

1. Which level of government does this opinion imply has the power to correct state violations of rights to life, liberty and property?

Gitlow v. New York (1925)

Background: Benjamin Gitlow, the son of Russian immigrants, published left-wing newspapers and pamphlets that called for the overthrow of the U.S. government, but did not call for immediate violence. Gitlow was charged and convicted under New York criminal law stating that anyone who “By word of mouth or writing advocates... overthrowing or overturning organized government by force or violence...” was guilty of a felony. His case eventually went to the Supreme Court. Since he had been convicted under a state law, the Court had to decide two questions. First: Did the First Amendment’s protection of free speech and press apply to the states? Second: If so, did the New York law violate the First Amendment? The Court answered yes to the first question, and no to the second.

The Court applied the First Amendment to the states through the Fourteenth Amendment’s Due Process Clause. Freedom of speech and press were fundamental “liberty” protected by the amendment from state action. The Court held, however, that the New York law was constitutional. States could ban speech that created a “dangerous tendency” even if the expression did not present a “clear and present danger.” (The “clear and present danger” test was the one used by the Court before its ruling in Gitlow.) Though Gitlow’s conviction was upheld, the Court ruled that the First Amendment did apply to the states. Applying the Bill of Rights to the states is called incorporation. The governor of New York later pardoned Gitlow, who later condemned Stalin and went on to write many anti-Communist speeches and articles.

Gitlow v. New York Majority Opinion—Excerpt, Justice Sanford

The precise question presented, and the only question which we can consider under this writ of error, then is whether the statute [law], as construed and applied in this case by the state courts, deprived the defendant of his liberty of expression in violation of the due process clause of the Fourteenth Amendment...

For present purposes, we may and do assume that freedom of speech and of the press which are protected by the First Amendment from abridgment by Congress are among the fundamental personal rights and “liberties” protected by the due process clause of the Fourteenth Amendment from impairment by the States...
It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom...

That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical [harmful] to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question...

Freedom of speech and press...does not protect disturbances to the public peace or the attempt to subvert the government. It does not protect publications or teachings which tend to subvert or imperil the government or to impede or hinder it in the performance of its governmental duties. ...It does not protect publications prompting the overthrow of government by force...In short, this freedom does not deprive a State of the primary and essential right of self-preservation...

We cannot hold that the present statute is an arbitrary or unreasonable exercise of the police power of the State unwarrantably infringing the freedom of speech or press, and we must and do sustain its constitutionality...

[I]t has been held that the general provisions of the statute may be constitutionally applied to the specific utterance of the defendant if its natural tendency and probable effect was to bring about the substantive evil which the legislative body might prevent...

**Gitlow v. New York** Dissenting Opinion - Excerpts, Justice Holmes

The general principle of free speech, it seems to me, must be taken to be included in the Fourteenth Amendment, in view of the scope that has been given to the word “liberty” as there used...

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that [the State] has a right to prevent...

... The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker’s enthusiasm for the result. Eloquence may set fire to reason. But whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration.

1. **Although Gitlow’s conviction was upheld, what did the Court consider for the first time in this case?**

2. **What is the relevance of the Fourteenth Amendment to this case?**
Handout D: Opinion Double-Check

**Directions:** Now that you have done more reading and study, rate your agreement with each statement again. Then, answer the question that follows.

1. I understand the principle of “equal justice/protection under the law.”
   
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2. When judging how well a country exemplifies the principle of equality under law, it should be judged against an ideal.
   
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3. When judging how well a country exemplifies the principle of equality under law, it should be judged against how well other countries do so.
   
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4. Since all people are created equal, all people should have equal outcomes.
   
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5. “Equal protection of the law” means treating everyone the same.
   
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Compare your responses from the first time you completed the survey to the second time, and answer the following questions.

1. Identify one statement for which your response changed from the first to the second time you completed this survey.

_______________________________________________________________________________________________________________

_______________________________________________________________________________________________________________

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2. For the statement you identified above, explain what textual evidence caused you to change response, based on the documents and court cases you studied in this lesson.

_______________________________________________________________________________________________________________

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3. If none of your responses changed, explain why. Include references to the documents you studied in this lesson.

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Handout A: The Fourteenth Amendment, Section 1 (1868)

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Critical Thinking Questions

1. With one or two partners, write this section of the Fourteenth Amendment in your own words.
2. Identify and explain three ways this amendment protects citizens’ liberty.
3. In what ways did this amendment change the protections for individual rights, as well as the division between state and federal power enshrined in the Bill of Rights?
Handout B: Digging into the Fourteenth Amendment

Directions: After reading “The Fourteenth Amendment and Incorporation” essay at www.docsoffreedom.org, be prepared to discuss the following questions in class.

1. What are three important clauses in the first section of the Fourteenth Amendment?
2. Identify a time when you, someone you know, or someone in a recent news event was denied due process.
3. Can you think of a time when you, someone you know, or someone in a recent news event was denied equal protection under the law?
4. Some people refer to the Fourteenth Amendment as the “Second Bill of Rights.” Explain what they mean by this.
5. Define incorporation.
6. The Founders believed that the Bill of Rights should apply only to the federal government. Why? Do you agree or disagree with the Founders? Explain.
Handout C: The Founders, the Fourteenth Amendment, and Me

In the 1780s, James Madison believed that the greatest threat to liberty came from the individual states, not from Congress. Accordingly, he favored allowing Congress to veto state laws.

**Directions:** In the box beside each quotation, restate each of Madison’s ideas in your own words.

<table>
<thead>
<tr>
<th>James Madison - His Own Words</th>
<th>James Madison in My Own Words</th>
</tr>
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<tbody>
<tr>
<td>“A constitutional negative [veto] on the laws of the States seems equally necessary to secure individuals against encroachments [limitations] on their rights.”</td>
<td>1.</td>
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<tr>
<td>- James Madison to Thomas Jefferson, 24 October, 1787</td>
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<tr>
<td>“No state shall violate the equal rights of conscience…”</td>
<td>2.</td>
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<tr>
<td>- James Madison</td>
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</table>

3. Reread closely Madison’s proposal for protecting individual liberties in the quotations above. How does his language differ from the language used in the final version of the First Amendment *(below)*?

*Congress shall make no law respecting the establishment of religion, or the free exercise thereof,*...
Handout C: Page 2

**Directions:** Restate each of the excerpts from the Fourteenth Amendment in your own words.

<table>
<thead>
<tr>
<th>The Fourteenth Amendment...</th>
<th>...in My Own Words</th>
</tr>
</thead>
<tbody>
<tr>
<td>All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.</td>
<td>4.</td>
</tr>
<tr>
<td>[No State] shall deprive any person of life, liberty, or property, without due process of law.</td>
<td>5.</td>
</tr>
<tr>
<td>[No State shall] deny to any person within its jurisdiction the equal protection of the laws.</td>
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</table>

7. As a result of incorporation, individuals who are unhappy with how states protect their liberties can bring suit in federal courts. Does it matter whether the state governments or the federal government has the power to protect our rights? Explain, and be prepared to discuss and defend your response in class.
Handout D: Incorporation – Unintended Consequences

Script

Directions: Those performing the script below: Before performing, read the script silently and create a personality for your assigned role by using facial expressions, intonation, and appropriate gestures. Those who will be in the audience: before the performance, read the script silently. In the margins, note the places where you see direct parallels to the concept of incorporation. All students: Be prepared, after the presentation, to discuss the questions that follow.

Roles:
Student
Ms. Jones (Government teacher)
Superintendent Sole
Mr. Smith (English teacher)
Principal Hart
Random student

Student: Both my government teacher and my English teacher have said that I will have two hours of homework each night. This is so unfair. I’m going to speak with them.
(Turning to English teacher) Mr. Smith, will you please reconsider?

Mr. Smith: On second thought, that does seem to be too much homework. I’ll plan to assign thirty minutes about twice a week—that should do it.

Student: Terrific.
(Turning to government teacher) Ms. Jones, how about you?

Ms. Jones: There is just so much to cover in this course, and I can’t do it all in class. You will just have to budget your time so you can spend two hours each night on government homework.

Student: This is just ridiculous. I’m going to speak to the principal.
(Turning to the principal) Principal Hart, what do you think about two hours of homework each night?

Principal Hart: I agree that the policy is unfair. It only applies to government class. Students in all classes will now be given two hours of homework each night.

Student: That’s not what I was expecting. Now the entire school is affected by that stupid homework requirement. I’m going to speak with the superintendent.
(Turning to the superintendent) Superintendent Sole, my principal is violating the rights of students in our school by requiring every course to have two hours of homework each night. This isn’t fair.
Superintendent Sole: I agree that the policy isn’t fair. Students in your school have too much homework and students in some schools have too little. In order to be fair to everyone, I am going to incorporate my decision so that it applies not only to your school but to every school. From now on, every class in every high school in the district will have no more than 30 minutes of homework once a week.

Student: Now that’s what I’m talkin’ about! But some of my friends in other high schools where they didn’t have very much homework might not be too happy. (Long pause.)

Random Student: (Walks across front of class/”stage” carrying sign saying, “Six months later...”)

Student: Can you believe this e-mail the superintendent sent out to all schools?

Superintendent Sole: Students and teachers, I have reconsidered my homework policy and realize that I have given you too much free time. Therefore, I am changing the policy. From now on, all students in all classes in all schools will have at least 30 minutes of homework every night.

Student: That is so unfair. I’m going to ask my teachers to change things. And if they say no, I’ll talk to the principal. And if they say no, I’ll go back to the superintendent.

Mr. Smith and Ms. Jones (together): Sorry, it’s a district policy. We can’t change it.

Principal Hart: Sorry, it’s a district policy. I can’t change it.

Superintendent Sole: Sorry, you asked me to make decisions about homework policy, and I’ve made them for the district. I’m not going to change.

Comprehension and Critical Thinking Questions

1. Who was affected by the teachers’ decisions?
2. Who was affected by the principal’s decision?
3. Who was affected by the superintendent’s decision?
4. Why did the superintendent incorporate her decision? Who would have liked or disliked her first decision? Her second decision?
5. In the real world of schools, at which level (class, school, or district) is it easiest to get changes made? Hardest to get changes made?
6. What are the advantages or disadvantages of incorporation?
7. Some say that incorporation has resulted in an expansion of our liberties. Others say that incorporation has resulted in an expansion of the federal government. With which assertion do you agree? Or, could both be correct? Explain you answer.
### Handout A: Founders vs. Progressives Quote Cards

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<tr>
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<tr>
<td>1</td>
<td>“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 among Men, deriving their just powers from the consent of the governed.”</td>
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<td>2</td>
<td>“Personal liberty is at last an uncrowned, dethroned king, with no one to do him reverence. ...We are no longer frightened by that ancient bogy — ‘paternalism in government.’ We affirm boldly, it is the business of government to be just that — paternal. ...Nothing human can be foreign to a true government.”</td>
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<td>3</td>
<td>“Can the liberties of a nation be sure when we remove their only firm basis, a conviction in the minds of the people, that these liberties are a gift from God?”</td>
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<td>4</td>
<td>“Better the occasional faults of a government that lives in a spirit of charity than the consistent omissions of a government frozen in the ice of its own indifference.”</td>
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<td>5</td>
<td>“Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!”</td>
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<td>6</td>
<td>“[N]atural liberty is a gift of the beneficent Creator, to the whole human race; and... civil liberty is founded in that; and cannot be wrested from any people, without the most manifest violation of justice. Civil liberty is only natural liberty, modified and secured by the sanctions of civil society.”</td>
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<td>7</td>
<td>“This is not a contest between persons. The humblest citizen in all the land, when clad in the armor of a righteous cause, is stronger than all the hosts of error.”</td>
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<td>8</td>
<td>“In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.”</td>
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<td>9</td>
<td>“As a man is said to have a right to his property, he may be equally said to have a property in his rights. Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions.”</td>
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<td>11</td>
<td>“Our country has deliberately undertaken a great social and economic experiment, noble in motive and far-reaching in purpose.”</td>
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<td>“For it is very clear that in fundamental theory socialism and democracy are almost if not quite one and the same. They both rest at bottom upon the absolute right of the community to determine its own destiny and that of its members. Men as communities are supreme over men as individuals.”</td>
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<td>12</td>
<td>“The doctrine of ‘personal liberty’ as applied to the use of liquor has been over-worked by the liquor men. As a matter of fact, there is no such thing as an absolute individual right to do any particular thing, or to eat or drink any particular thing, or to enjoy the association of one's own family, or even to live, if that thing is in conflict with ‘the law of public necessity.’”</td>
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Handout B: Founders vs. Progressives – Amendment Analysis

**Directions:** Read each of the Amendments below. Refer to all of them to answer the questions that follow.

**Founders’ Amendments**

**First Amendment:** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**Third Amendment:** No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

**Fourth Amendment:** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Sixth Amendment:** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

**Eighth Amendment:** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Ninth Amendment:** The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**Tenth Amendment:** The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

**Sixteenth Amendment**

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

**Seventeenth Amendment - Excerpt**

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in
Critical Thinking Questions

1. What do these amendments reveal about their authors’ beliefs about the relationship between citizens and their government? About the purpose of government?

2. What is the balance of power between the citizen and the national government in these amendments? What is the balance of power between states and the national government?

3. How do the Founders’ Amendments differ from the Progressives’ Amendments?

4. Why do you think some specific rights – or prohibitions – appear more often than others in the documents?

5. Of the rights – or prohibitions – referenced in these amendments, which do you believe are the most important? Why?
Handout A: The Bill of Rights

**Amendment I:** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

**Amendment II:** A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

**Amendment III:** No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

**Amendment IV:** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Amendment V:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Amendment VI:** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**Amendment VII:** In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

**Amendment VIII:** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Amendment IX:** The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**Amendment X:** The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.
Handout B: Excerpts from the State of the Union Address by Franklin Delano Roosevelt (1944)

As our Nation has grown in size and stature, however—as our industrial economy expanded—these political rights proved inadequate to assure us equality in the pursuit of happiness.

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. “Necessitous men are not free men.” People who are hungry and out of a job are the stuff of which dictatorships are made.

In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all regardless of station, race, or creed.

Among these are:

The right to a useful and remunerative job in the industries or shops or farms or mines of the Nation;
The right to earn enough to provide adequate food and clothing and recreation;
The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;
The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;
The right of every family to a decent home;
The right to adequate medical care and the opportunity to achieve and enjoy good health;
The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;
The right to a good education.

All of these rights spell security. And after this war is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being.

America’s own rightful place in the world depends in large part upon how fully these and similar rights have been carried into practice for our citizens. For unless there is security here at home there cannot be lasting peace in the world.
Handout C: Negative and Positive Rights

**Directions:** Read the definitions of negative and positive rights below, then list examples of each type of right and answer the questions that follow.

**Negative Rights:** Rights that ensure the individual's natural freedom to act while not requiring anyone to act on behalf of another.*

Examples of Negative Rights: ______________________
______________________________________________________
______________________________________________________
______________________________________________________

**Positive Rights:** Rights which require others to perform a duty or act in a certain way.

Examples of Positive Rights: ______________________
______________________________________________________
______________________________________________________
______________________________________________________

**Critical Thinking Questions**

1. Does the Bill of Rights list negative or positive rights? Explain your answer.
2. Does Roosevelt’s “Second Bill of Rights” list negative or positive rights? Explain your answer.
3. Do you agree with Roosevelt’s statement that, “As our Nation has grown in size and stature, however—as our industrial economy expanded—these political rights proved inadequate to assure us equality in the pursuit of happiness”? Explain your answer.

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* A notable exception to this general rule is the Sixth Amendment’s guarantee, under certain circumstances, of trial by jury. This implies a positive right to a jury trial for defendants and therefore an obligation among citizens to sit on juries and cooperate in other elements of a fair trial, for example providing testimony on behalf of the accused.
The purpose of protecting the life of our Nation and preserving the liberty of our citizens is to pursue the happiness of our people. Our success in that pursuit is the test of our success as a Nation...[I]n your time we have the opportunity to move not only toward the rich society and the powerful society, but upward to the Great Society.

The Great Society rests on abundance and liberty for all. It demands an end to poverty and racial injustice, to which we are totally committed in our time. But that is just the beginning. The Great Society is a place where every child can find knowledge to enrich his mind and to enlarge his talents. It is a place where leisure is a welcome chance to build and reflect, not a feared cause of boredom and restlessness.

But most of all, the Great Society is not a safe harbor, a resting place, a final objective, a finished work. It is a challenge constantly renewed, beckoning us toward a destiny where the meaning of our lives matches the marvelous products of our labor.

So I want to talk to you today about three places where we begin to build the Great Society in our cities, in our countryside, and in our classrooms... In the remainder of this century urban population will double, city land will double, and we will have to build homes, highways, and facilities equal to all those built since this country was first settled. So in the next 40 years we must re-build the entire urban United States...Our society will never be great until our cities are great.

A second place where we begin to build the Great Society is in our countryside. We have always prided ourselves on being not only America the strong and America the free, but America the beautiful. Today that beauty is in danger. The water we drink, the food we eat, the very air that we breathe, are threatened with pollution.

A third place to build the Great Society is in the classrooms of America...We must seek an educational system which grows in excellence as it grows in size. This means better training for our teachers. It means preparing youth to enjoy their hours of leisure as well as their hours of labor. It means exploring new techniques of teaching, to find new ways to stimulate the love of learning and the capacity for creation.

These are three of the central issues of the Great Society. While our Government has many programs directed at those issues, I do not pretend that we have the full answer to those problems.

But I do promise this: We are going to assemble the best thought and the broadest knowledge from all over the world to find those answers for America. I intend to establish working groups to prepare a series of White House conferences and meetings on the cities, on natural beauty, on the quality of education, and on other emerging challenges. And from these meetings and from this inspiration and from these studies we will begin to set our course toward the Great Society...
Handout A: Page 2

Critical Thinking Questions

1. What is the Great Society?

2. What three actions does Johnson believe are necessary to achieve the Great Society?

3. What is the grammatical rule for capitalizing the word “nation”? What might a reader infer about the fact that President Johnson capitalized it in the official transcript of this speech?

4. What historical events were occurring near the time of the Great Society? What effects do you believe these events may have had on the federal government and President Johnson?

5. How can the Great Society be compared to the New Deal?
Handout B: Great Society Laws and Programs

Directions: Research one of the laws or programs listed below. Use the “Questions to Consider” to write an essay in which you explain the law or program, and make an argument as to whether the law was or was not constitutional.

- Economic Opportunity Act of 1964
- Urban Mass Transportation Act of 1964
- Elementary and Secondary Education Act of 1965
- Higher Education Act of 1965
- Social Security Act of 1965
- National Traffic and Motor Vehicle Safety Act of 1966
- Highway Safety Act of 1966
- Public Broadcasting Act of 1967
- Truth-in-Lending Act of 1968
- Bilingual Education Act of 1968

Questions to Consider

1. What was the law’s goal?
2. What programs were put in place under this law?
3. What were arguments for/against the program?
4. What was the outcome of the law? Did it meet its goal?
5. Is this law/program still in place? If not, why was it repealed or discontinued? If so, what arguments exist in favor/against its continuation
6. Do you believe this law is/was constitutional?
Handout A: What Is the Scope of the Bill of Rights?

The Bill of Rights lists the rights guaranteed to American citizens, but what about the rights not listed? What if the rights of one person infringe upon the rights of another? The Ninth Amendment states: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” The Founders believed that the Ninth Amendment was important to ensure that citizens’ rights were not limited to the rights listed in the Constitution or Bill of Rights.

What Is the Ninth Amendment’s Purpose?

The Ninth Amendment ensures that the rights actually listed in the Bill of Rights are not assumed to be more important than rights not listed. The Ninth Amendment does not list any specific rights, but it raises many possibilities. It has been read to protect all natural rights not specifically listed in the First through Eighth Amendments.

There are questions as to whether some personal liberty rights are truly natural rights. Further, many ask who should be the ones to decide whether a right exists. If the Constitution does not specifically list a right, should judges be the ones to say if it exists or not? Or, particularly with respect to moral issues, should it be up to the people and their elected representatives? There is no right to drive a car listed in the Bill of Rights. Some people claim, though, that the Ninth Amendment protects citizens’ right to drive. The Supreme Court has been hesitant to use Ninth Amendment claims alone when deciding cases. They have looked for other support of rights in the Bill of Rights and Constitution.

Is There a Right to Privacy?

People often talk about a right to privacy. This is not among the rights explicitly mentioned in the Bill of Rights or elsewhere in the Constitution. But most people feel that privacy and the right to make personal choices are part of being free. The Supreme Court has indeed found some kinds of privacy to be a right that the Ninth Amendment protects.

Modern “privacy” constitutional law began in 1965. The Supreme Court cited the Ninth Amendment when it struck down a state law banning the use of birth control. The ban applied to married couples as well as singles. In Griswold v. Connecticut (1965), the Court determined that the Ninth Amendment protects privacy within marriage. The Court said, “We deal with a right of privacy older than the Bill of Rights...To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments...is to ignore the Ninth Amendment and to give it no effect whatsoever.”

Like most cases about the Ninth Amendment, the Court found further constitutional basis for its decision. In Griswold, the Court cited the First, Third, Fourth, and Fifth Amendments as creating a “zone of privacy.”
What Are Reproductive Rights?

The Supreme Court built on Griswold and the zone of privacy. It used the Ninth and Fourteenth Amendments in the reasoning of Roe v. Wade (1973). It reaffirmed a right to privacy when it recognized a woman's right to an abortion. “This right of privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.”

Some argue that the Court decided Roe v. Wade incorrectly. They maintain that the Constitution is silent on the issue of abortion. They believe, therefore, it is up to state legislatures to decide the matter. Others believe life begins at conception and therefore the embryo or fetus has inalienable rights. They argue that a woman’s privacy rights need to be balanced against the right to life of the embryo, fetus, or unborn child.

Do You Have a Right to Die? To Take Drugs?

Other issues alleging personal liberty continue to be debated. As was the case in Griswold and Roe, many personal liberty cases hinge on privacy. For that reason, they are often about actions that are personal and intimate. For example, the Court said states could outlaw homosexual activity in Bowers v. Hardwick (1986), but reversed this decision in Lawrence v. Texas (2003). In United States v. Windsor (2013) case, the Court determined that the Defense of Marriage Act was unconstitutional. The decision asserted that the federal government must recognize same-sex marriages and same-sex spouses equally.

Few things are as personal as death. Should terminally ill people be able to ask their doctor to help them die? The Court has rejected a doctor’s argument that a person had a constitutional right to physician-assisted suicide. States could allow assisted suicide, the Court said, but the Constitution granted no such right.

Some people demand that they have a right to take whatever medicine they wish, even ones that have not yet been approved by the United States Food and Drug Administration. Opponents argue that the federal government has a duty to make sure all of the country’s medicine is safe and effective.

Critical Thinking Questions

1. What is the purpose of the Ninth Amendment in protecting the rest of the rights listed in the Bill of Rights?

2. According to the Supreme Court, how does the Ninth Amendment protect privacy?

3. How did the Court rule in Bowers v. Hardwick (1986), Lawrence v. Texas (2003), and United States v. Windsor (2013)? How has the interpretation of the Ninth Amendment changed over time?
## Handout B: Supreme Court Personal Liberty Decisions

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Majority Opinion</th>
<th>Dissenting Opinion</th>
<th>Your Summary of the Opinion</th>
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<tbody>
<tr>
<td>Griswold v. Connecticut (1965)</td>
<td>“We deal with a right of privacy older than the Bill of Rights. To hold that a right is so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments...is to ignore the Ninth Amendment and to give it no effect whatsoever.”</td>
<td>“...The Court talks about constitutional right of privacy as though there is some constitutional provision...forbidding any law ever to be passed which might abridge the privacy of individuals. But there is not.”</td>
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<tr>
<td>Roe v. Wade (1973)</td>
<td>“This right of privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action...or in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”</td>
<td>“The fact that a majority of the States—reflecting, after all, the majority sentiment in those States...have had restrictions on abortions for at least a century—is a strong indication, it seems to me, that the asserted right to an abortion is not so rooted in the traditions and conscience of our people as to be ranked as fundamental.”</td>
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<tr>
<td>Case Name</td>
<td>Opinion Excerpts</td>
<td>Your Summary of the Opinion</td>
<td>Do you agree with the Court’s decision?</td>
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<td><em>Bowers v. Hardwick</em> (1986)</td>
<td><strong>Majority Opinion:</strong> “[The] respondent would have us announce, [that there is] a fundamental right to engage in homosexual sodomy. This we are quite unwilling to do.”</td>
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<td><strong>Dissenting Opinion:</strong> “…The mere knowledge that others...do not adhere to one’s value system cannot be... an interest that can justify invading the houses, hearts, and minds of citizens who choose to live their lives differently.”</td>
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<td><em>Lawrence v. Texas</em> (2003)</td>
<td><strong>Majority Opinion:</strong> “Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. <em>Bowers v. Hardwick</em> was not correct when it was decided, and it is not correct today…”</td>
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<td><strong>Dissenting Opinion:</strong> “The Texas [law]...imposes constraints on liberty. So do laws prohibiting prostitution... heroin, and...working more than 60 hours per week...But there is no right to ‘liberty’ under the Due Process Clause. States [may] deprive their citizens of ‘liberty,’ so long as ‘due process of law’ is provided.”</td>
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<tr>
<td><em>United States v. Windsor</em> (2013)</td>
<td><strong>Majority Opinion:</strong> “By seeking to displace this protection and treating those persons as living in marriages less respected than others, the federal statute is in violation of the Fifth Amendment.”</td>
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<td></td>
<td><strong>Dissenting Opinion:</strong> “By formally declaring anyone opposed to same-sex marriage an enemy of human decency, the majority arms well every challenger to a state law restricting marriage to its traditional definition.”</td>
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Handout A: How Does the Constitution Protect Liberty?

The Ninth Amendment states, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” Personal liberty is at the heart of freedom. Americans cherish their independence to make choices every day that affect their lives. The diverse and colorful society we enjoy is possible because each of us has personal liberty. Personal liberty is the freedom to act and to do the legal things you want to do: get a certain job, listen to music you enjoy, or travel to places you want to see. In the end, personal liberty is the right to have some control over your own destiny. At the same time, personal liberty must be balanced against the rights of others. For instance, you do not have the personal liberty to blast music in a public library, wear revealing clothing that disturbs the school environment, or drink alcohol before you reach the legal age.

Do You Have a Right to Force Others to Act?

You have a right to free speech. You do not, however, have the right to make anyone listen to you. The right to speak does not include the right to be heard. Along these same lines, you have the right to write songs and record them. No one can stop you from making your own record. You do not, however, have the right to get a record contract. You don’t have a right to have your album produced and distributed.

There is no right to force a record label to do these things for you. This principle demonstrates how personal liberty goes hand in hand with personal responsibility. There are numerous rights which guarantee that people are free to go after their own dreams and goals. This fulfills the inalienable right to pursue happiness stated in the Declaration of Independence.

What Rights Does the Ninth Amendment Protect?

The Bill of Rights was added to make sure the federal government did not intrude too much into peoples’ lives. But adding the amendments was controversial. It would be impossible to list every right. The Federalists worried that listing some rights might mean that others would be thought of as less important. To guard against this, the Ninth Amendment was included in the Bill of Rights.

The Ninth Amendment acknowledges the people’s unenumerated rights, or rights not listed in the first eight amendments or elsewhere in the Constitution. Of course, this often leaves open as many questions as it answers. Among the rights listed in the first eight are speech, religion, property and others. What rights does the Ninth Amendment cover? It does not say. Because of its broad scope, the Ninth Amendment is one key to the defense of personal liberty. Another consequence of its broad scope is that many believe that where the Constitution does not specifically recognize a particular right, it should be left to the people and their elected officials to determine whether a right exists. This raises the issue of balancing personal liberty with democracy.
Sometimes the Supreme Court decides that the listed rights imply the existence of a right that is not specifically mentioned. A famous example of this is the right to privacy. The First Amendment guarantees that you can associate with whomever you like. The Third and Fourth Amendments promise that the government cannot intrude into your home arbitrarily and without legal cause. The Fifth Amendment assures that you can keep silent if accused of a crime. The Supreme Court first identified and labeled this right “privacy” in *Griswold v. Connecticut* (1965). The right to privacy is involved in many issues of personal liberty including contraception, abortion, gay rights, and drug testing of students, athletes, and workers. The Ninth Amendment alone has rarely been expressly used to claim unenumerated rights.

**What Does Due Process Mean?**

The Fifth and Fourteenth Amendments are crucial in protecting personal liberties such as property, contracts, and so forth. The Fifth and Fourteenth Amendments protect the individual’s right to due process. Due process entitles all citizens to fair treatment by the government. For instance, it would be unfair for the government to skip part of a trial. The government cannot take your property away from you without compensating you for your loss. Due process also means that the law itself must be constitutional. Due process rights protect personal liberty in that they check government power.

Lawmakers must write legislation that respects individual rights, and those laws must be enforced fairly. One thing is certain: personal liberties are among the most hotly debated issues today. What kind of government involvement in peoples’ lives is appropriate? The question raises issues that are fundamental to liberty.

**Comprehension and Critical Thinking Questions**

1. How do the rights in the Bill of Rights protect liberty? Why did the Founders enumerate these rights in the Bill of Rights?

2. Why is due process protected in several amendments? What due process rights are protected?

3. Explain why the distinctions addressed in the following passage are important and how they are related to liberty.

   “You have a right to free speech. You do not, however, have the right to make anyone listen to you. The right to speak does not include the right to be heard ... This principle demonstrates how personal liberty goes hand in hand with personal responsibility.”
Handout B: Pierce v. Society of Sisters (1925)

**Case Background:** In 1922, the state of Oregon passed the Compulsory Education Act that stated that all children between the ages of eight and sixteen must attend public school. The Society of Sisters of the Holy Names of Jesus and Mary, nuns who ran a local Catholic school, and Hill Military Academy, a private school, sued the governor, attorney general, and district attorney. Both groups alleged that the state was infringing upon their Fourteenth Amendment rights. The Sisters alleged the state was infringing upon parents’ right to choose where their children went to school, and the Academy argued that the policy violated right to due process in depriving the school of their property in revenues collected through contracts with parents, employees, and for supplies and equipment.

1. What did the Compulsory Education Act require? Why were parochial and private schools concerned about this law?

2. What other constitutional provisions or amendments could have been brought before the Court in this case? Why do you think these arguments were not made?

**Pierce v. Society of Sisters (1925) Unanimous Opinion**

The Supreme Court agreed that the Oregon law was unconstitutional in requiring children to attend public schools. The majority opinion stated, “The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only.” The Court also “declared the right to conduct schools was property, and that parents and guardians, as a part of their liberty, might direct the education of children by selecting reputable teachers and places,” and, “children are not mere creatures of the state.” The Court believed that parents have a right to decide whether their children will be home-schooled or go to a public, private, or parochial school. It is not up to the government to decide.

3. Do you agree with the Court’s ruling? Explain your answer. What is the significance, if any, of the fact that the ruling in this case was unanimous?
Handout A: Eisenhower and the Little Rock Crisis

President Eisenhower looked at the telegram from the mayor of Little Rock. It told of a mob in front of a school, angered over a court’s order to integrate. The mob was cursing, attacking black reporters, and blocking the entry of nine African American students. Eisenhower did not want to use federal troops against Americans. But given his constitutional responsibility to ensure that the laws were faithfully executed, could he allow mob rule in Little Rock? Either way, he would have to answer to critics. He cleared his head and began to write down the reasons for what he was about to do...

Segregation and the Courts

Since Reconstruction, many aspects of American life were segregated. In Southern states, as well as some Northern ones, laws known as Jim Crow laws permitted and often required segregated bathrooms, drinking fountains, parks, restaurants, and other public spaces. The Supreme Court upheld this legal practice in the case of Plessy v. Ferguson (1896).

A half-century later, the Court reversed the Plessy decision. Brown v. Board of Education (1954) declared segregation in public schools “inherently unequal” and unconstitutional. In a related case, Brown II (1955), the Court ordered schools to desegregate “with all deliberate speed.”

Responses to Brown

The Brown decision was hailed as a victory for equal treatment under law. It recognized the color-blind nature of the Constitution, and that government cannot treat people differently based on their race. But the decision was also criticized by some for not relying on strict constitutional principles and depending too heavily on social science. Southern resistance to the Brown II order was widespread. Many saw the decision as an infringement on powers reserved to the states under the Constitution.

President Dwight D. Eisenhower was among those who had reservations about the decision. He believed that schools were the wrong place to begin desegregating American society. He thought it would be more prudent to begin with places like parks and restaurants. Finally, Eisenhower believed that changes to traditional social practices could not be imposed by law, but had to come from the people themselves. Despite his personal beliefs, Eisenhower performed his duty to ensure the laws were faithfully executed by enforcing desegregation in schools and other public facilities in the District of Columbia.

The Little Rock Crisis

The Little Rock school board planned to start integration in the 1957-58 school year, and a federal district court ordered it to begin. Nine African American students enrolled at Central High School. Segregationists threatened to protest. Arkansas Governor Orval Faubus ordered the state’s National Guard to the school to “keep order,” but in fact, the Guard members blocked the African American students from entering the school. The federal district court ordered Governor Faubus to withdraw the Guard, which he did.

The nine students tried again three weeks later, this time escorted by city police. They went in a rear door to avoid the angry mob that had once again gathered. African American journalists who came to cover the event were attacked. Protesters soon forced their way into the building. Police escorted
the students out for their own safety.

The Mayor of Little Rock sent President Eisenhower a telegram describing the events and concluding with a suggestion: “If the Justice Department desires to enforce the orders of the federal court in regard to integration in this city, the city police will be available to lend such support as you may require.”

Less than twenty-four hours later came a second telegram from the Mayor, telling of an even larger mob – and now begging for help: “I am pleading to you … in the interest of humanity, law, and order … to provide the necessary federal troops within several hours.”

Eisenhower hated the idea of using federal troops against Americans. However, he believed that his constitutional duty to enforce the law was, in his words, “inescapable.” His decision was the result of reflection and discussion with advisors. His handwritten notes show that he was concerned with protecting the image of the U.S. as a nation committed to the rule of law.

The troops would be there “NOT to enforce integration, but to prevent opposition by violence to orders of a court.” He and his Attorney General discussed similar events from American history, including George Washington’s response to the Whiskey Rebellion. Finally, he reasoned that federalizing the Arkansas National Guard and sending the Army to Little Rock to enforce the court order would prevent pitting “brother against brother.”

**Executive Order 10730**

Eisenhower issued a proclamation ordering the mob around the school to “disperse.” But again the mob returned. The next day, Eisenhower issued Executive Order 10730. This Order authorized military force “for the removal of obstruction of justice ... with respect to matters relating to enrollment and attendance at public schools in the Little Rock School District, Little Rock, Arkansas.”

A thousand members from the 101st Airborne Division arrived to keep the peace. Exercising his constitutional power, the president also placed all 10,000 men of the Arkansas National Guard under federal control, removing them from the command of Governor Faubus. The soldiers kept the crowd under control, in some cases escorting protesters away at gunpoint.

The students were able to attend class almost a month into the school year. But images of U.S. soldiers pointing rifles and other weapons at Americans shocked the nation. Governor Faubus protested Eisenhower’s actions, saying, “My fellow citizens, we are now an occupied territory ... What is happening in America?” One U.S. Senator from Georgia compared the U.S. troops to Adolf Hitler’s storm troopers. Eisenhower did not make the decision lightly, and the debate over the wisdom of his response continues.

**Critical Thinking Questions**

1. Describe the significance of *Plessy v. Ferguson* (1896), *Brown v. Board of Education* (1954), and *Brown II* (1955) in one brief sentence each.

2. What was the “Little Rock Crisis”?

3. How did President Eisenhower respond to the situation in Little Rock?

4. What was the constitutional support for his action?

5. Are there constitutional principles that support opposition to Eisenhower’s action? Explain.
Handout B: Constitution and Amendments

The United States Constitution, 1789

The executive power shall be vested in a President of the United States of America ... The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States ... He shall take care that the laws be faithfully executed...

1. Summarize these constitutional duties of the President.
2. What is the militia?

The Tenth Amendment, 1791

The powers not delegated to the United States by the Constitution, not prohibited by it to the states, are reserved to the states respectively, or to the people.

1. If a power is not given to the national government in the Constitution, who keeps it?

The Fourteenth Amendment, 1865

No state shall... deny to any person within its jurisdiction the equal protection of the laws.

1. Put this clause of the Fourteenth Amendment in your own words.
Handout C: Images of Desegregation

Bayonet Point, September 25, 1957

Terrence Roberts and Two Arkansas National Guardsmen, September 4, 1957

1. In the photo on the left, what duties are the members of the 101st Airborne Division carrying out with respect to the integration protestors?

2. How does this action compare with the one depicted in the photo at the right?
Handout D: The Mayor and the President — Tuesday, September 24, 1957

9:14 AM, September 24, 1957 – Telegram from Mayor Mann to President Eisenhower

1. When was this telegram sent?

2. What was the purpose of this telegram? Why do you think Mann reached out to the president?
EXECUTIVE ORDER 10730

PROVIDING ASSISTANCE FOR THE REMOVAL OF AN
OBSTRUCTION OF JUSTICE WITHIN THE STATE OF ARKANSAS

... WHEREAS the command contained in ... Proclamation [3204] has not been obeyed and willful obstruction of enforcement of said court orders still exists and threatens to continue...

Section 1. I hereby authorize and direct the Secretary of Defense to order into the active military service of the United States as he may deem appropriate to carry out the purposes of this Order, any or all of the units of the National Guard of the United States and of the Air National Guard of the United States within the State of Arkansas to serve in the active military service of the United States for an indefinite period and until relieved by appropriate orders.

SEC. 2. The Secretary of Defense is authorized and directed to take all appropriate steps to enforce any orders of the United States District Court for the Eastern District of Arkansas for the removal of obstruction of justice in the State of Arkansas with respect to matters relating to enrollment and attendance at public schools in the Little Rock School District, Little Rock, Arkansas...

Critical Thinking Questions

1. What type of document is this?
2. Why does Eisenhower refer to his earlier proclamation (Proclamation 3204) ?
3. What action does Eisenhower “authorize and direct” in Section 1?
4. What action does Eisenhower “authorize and direct” in Section 2?
Handout F: Eisenhower’s Address to the Nation, September 24, 1957

Our personal opinions about the [Brown v. Board of Education] decision have no bearing on the matter of enforcement ...During the past several years, many communities in our Southern States have instituted [integration] plans. They thus demonstrated to the world that we are a nation in which laws, not men, are supreme. I regret to say that this truth—the cornerstone of our liberties—was not observed [at Central High School in Little Rock]...

The very basis of our individual rights and freedoms rests upon the certainty that the President and the Executive Branch of Government will support and insure the carrying out of the decisions of the Federal Courts, even, when necessary with all the means at the President’s command. Unless the President did so, anarchy would result. There would be no security for any except that which each one of us could provide for himself ...Mob rule cannot be allowed to override the decisions of our courts.

The running of our school system and the maintenance of peace and order in each of our States are strictly local affairs and the Federal Government does not interfere except in a very few special cases and when requested by one of the several States. In the present case the troops are there, pursuant to law, solely for the purpose of preventing interference with the orders of the Court. The proper use of the powers of the Executive Branch to enforce the orders of a Federal Court is limited to extraordinary and compelling circumstances. Manifestly, such an extreme situation has been created in Little Rock...

1. What does Eisenhower mean when he says the U.S. is “a nation in which laws, not men, are supreme”?

2. What “certainty” does Eisenhower call the “very basis of our individual rights and freedoms”?

3. What two conditions does Eisenhower state must be present in order for the federal government to interfere in state and local affairs?
Handout G: Analyzing Documents

Directions: For each document, explain how the Constitution applies, then draw lines between the documents and explain the connections you found.
He was imprisoned—for life—in the Tower of London in December 1668, but William Penn was unrepentant. “My prison shall be my grave before I will budge a jot,” he said. “I owe my conscience to no mortal man.” Only twenty-four years old, Penn had crossed the wrong people. He had written and published a critique of England’s official church doctrines. Like thousands of religious separatists at the time, he had been “flung into Jail” and asked to publicly deny his beliefs. Instead, he held firm to his beliefs while his country, for a time, did everything it could to force citizens to follow one faith.

Fortunately for Penn, he was well-educated and well-connected. He spent only eight months in his small room at the Tower. He passed the time writing two more influential essays with nonconformist views. In 1669, a family friend (James, Duke of York, and later King James II) secured his release perhaps upon the urging of Penn’s father, a wealthy and respected admiral in the royal navy.

Sir William Penn was extremely familiar with, and not very happy about, his son’s tendency to flout tradition. After his son had been kicked out of Oxford at seventeen for expressing his religious views and for not attending required religious services, it was his father who sent him to study at a Protestant school in France, hoping to reform him. When that too failed, it was his father who called Penn back to England, put him in law school, and introduced him to the king’s court. He was well received.

Nevertheless, in 1666 at the age of twenty-two, Penn had joined the Religious Society of Friends, a new and radical religious group. They were known as “Quakers” (a derogatory term), and persecuted in England. Guided by his conscience and their teachings, Penn became an outspoken supporter and writer in search of mutual respect for varying religions. To anyone who would listen, he argued in defense of religious liberty, equality, and self-government.

Penn’s writings reflected the Friends’ teachings. All living things had an “Inner Light” of God. There was no need for established church rituals or for ordained ministers. Believers would hold meetings, and sit in silence, until moved by the Spirit to speak. Both men and women could participate with equal respect. They did not swear oaths. They were pacifists. They advocated plain dress, plain speech, and respect for all people and living things. They used the informal “thee” instead of “you” regardless of social standing. They would not remove their hats in public places or in deference to superiors. They did not baptize nor take communion. In short, their views were considered heretical and controversial.

By the time his father passed away in 1670, Penn had published more essays, preached in the streets, and been arrested again. “I publickly confess myself to be a very hearty Dissenter from the established worship of these nations...” he wrote that year. The Society of Friends continued to be persecuted, and he openly questioned the authority of the government to restrict by law the religious beliefs of man. “It enthroned Man as king over conscience,” he declared in his essay “The Great Case of Liberty of Conscience.”

Around the same time, Penn became increasingly interested in America—both as an economic activity and as an experiment in self-government.
and freedom of religion. He managed land in West New Jersey, and wrote, it is believed, its “Concessions and Agreements” in 1672. The document included a rare protection: “No Men . . . hath Power of authority to rule over Men’s Consciences and Religious matters.”

Uncertain about the future of religious toleration in England, in the years that followed Penn petitioned the king to begin a colony in America. In March 1681, he was given ownership of the “largest remaining piece of land,” nearly 45,000 square miles of sparsely settled forest sandwiched between New York and Maryland. He wanted to call it “New Wales” or “Sylvania” but the king ordered it named after Penn’s father, “Penn’s Woods” – Pennsylvania.

Penn advertised the colony, calling on “adventurers” from all nations and faiths to settle there. He promised them that they would be “governed by laws of your own making” and free to practice whatever religion they chose. In five years, Pennsylvania had six thousand settlers. Penn called it his “Holy Experiment.”

Pennsylvania could not be just a haven for religious dissenters. Penn believed that respect for individual liberty would bring economic prosperity. He worked hard to recruit ambitious adventurers and affluent supporters. He carefully selected the location for Philadelphia (the City of Brotherly Love), so that it would become a bustling commercial center. He kept in mind the king’s charter and its goal: enlarge the English empire, make money, and convert “Natives” to Christianity. Penn would have unprecedented powers as governor and would answer to the king.

Penn first arrived in the colony in 1682 on a ship called the Welcome. He met with the settlers and presided over the first session of the House of Representatives. He presented his First Frame of Government, which included the provision: “That all persons living in this province, who . . . acknowledge the one Almighty and eternal God . . . and that hold themselves obliged in conscience to live peaceably and justly in civil society, shall, in no ways, be molested or prejudiced for their religious persuasion, or practice, in matters of faith and worship, nor . . . be compelled . . . to frequent or maintain any religious worship, place or ministry . . . ”

He was the first colonial governor willing to put in place such radical protections. In the early years, the frame was amended, but respect for religious liberty remained. Penn stayed just long enough to build peaceful relationships with the Native Americans and oversaw early legislative efforts. He then returned to England and spent most of his life there defending colonial interests.

The colony prospered. Although it would never become the ideal state he had imagined, 20,000 settlers were living there when Penn returned fifteen years later in 1699. They came from a wide variety of sects—Quakers, Lutherans, Reformed, Mennonites, Amish, German Baptist Brethren (“Dunkers”), Schwenkfelders, Presbyterians, and Moravians—and lived together respectfully and peacefully. (Catholics, Jews, and Methodists would follow in the early 1700s.)

Penn’s conviction that “no People can be truly happy, though under the greatest Enjoyment of Civil Liberties, if abridged of the Freedom of their Consciences” became the first provision of Pennsylvania’s new Charter of Privileges in 1701. William Penn believed that good government could not be coercive, force a faith, or require conformity. An abiding respect for individual beliefs and for self-government, he maintained, would bring peace and prosperity to Pennsylvania—and it did.
Critical Thinking Questions

1. Why is respect for individual liberty – religious, political, or economic – critical for the success of government?

2. Penn believed that “no People can be truly happy, though under the greatest Enjoyment of Civil Liberties, if abridged of the Freedom of their Consciences.” In other words, if government does not respect “freedom of conscience” a nation (a People) cannot be happy. Do you agree or disagree? Explain.
Handout I: Founders’ Views About Respect for Religious Beliefs

Directions: Closely read the statements of the Founders’ views about respect for religious beliefs. Answer the questions that follow on a separate sheet of paper.

First Amendment to the United States Constitution
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

George Washington, excerpt from Reply to the Hebrew Congregation, 1790
. . . The Citizens of the United States of America have a right to applaud themselves for having given to mankind examples of an enlarged and liberal policy: a policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support . . .

James Madison, excerpt from Memorial and Remonstrance, 1785
. . . The Bill [providing tax support for Christian ministers] violates the equality which ought to be the basis of every law, and which is more indispensable, in proportion as the validity or expediency of any law is more liable to be impeached. If “all men are by nature equally free and independent,” all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an “equal title to the free exercise of Religion according to the dictates of Conscience.” Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God, therefore, not to man, must an account of it be rendered. As the Bill violates equality by subjecting some to peculiar burdens, so it violates the same principle, by granting to others peculiar exemptions . . .
Critical Thinking Questions

1. What did George Washington say about toleration in his letter to the Hebrew congregation?

2. In his *Memorial and Remonstrance*, did Madison seem to support the idea of religious toleration?

3. Why do you think that Madison fails to comment on the practices of non-believers or pagan religions, etc.?

4. How could Washington want government to practice “true religion” while at the same time believing the country had gone beyond toleration of religions?

5. Why does Thomas Jefferson contemplate the First Amendment “with sovereign reverence”? Does Jefferson respect different religious beliefs?
Handout A: The United States Constitution

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one,
Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

**Election of Senators**

Section 3. The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

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

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

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.
Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

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

Section 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the
same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time: and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the
common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto Law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present,
emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States,
directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor
Powers of the President

Section 2. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Communication with Congress and other responsibilities of the President

Section 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he...
Removal from office

Section 4. The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

The Judicial Branch

Composition of the Judicial Branch

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Jurisdiction (reach) of the Judicial Branch

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not
<table>
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<tr>
<th>Definition of treason</th>
<th>Article IV</th>
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<tr>
<td>&quot;Committed within any state, the trial shall be at such place or places as the Congress may by law have directed.&quot;</td>
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<tr>
<td>Section 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.</td>
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<td>The Congress shall have power to declare the punishment of treason, but no attainer of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.</td>
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<th>Relationship among states</th>
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<td>States accept laws and contracts of other states</td>
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<td>The rights and responsibilities of U.S. citizenship are the same in all states</td>
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<th>Admission of new states</th>
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<td>&quot;New states may be admitted by the Congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.&quot;</td>
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<td>The Congress shall have power to dispose of and make all</td>
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needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Article V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive
Ratification of the Constitution

and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Article VII

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven and of the independence of the United States of America the twelfth. In witness whereof We have hereunto subscribed our Names,

<table>
<thead>
<tr>
<th>Signatures</th>
<th>New York:</th>
<th>Delaware:</th>
</tr>
</thead>
<tbody>
<tr>
<td>G. Washington-</td>
<td>Alexander Hamilton</td>
<td>Geo: Read, Gunning</td>
</tr>
<tr>
<td>Presidt. and deputy from Virginia</td>
<td></td>
<td>Bedford jun, John</td>
</tr>
<tr>
<td>New Hampshire:</td>
<td>John Langdon,</td>
<td>Dickinson, Richard</td>
</tr>
<tr>
<td>John Langdon,</td>
<td>Nicholas Gilman</td>
<td>Bassett, Jaco: Broom</td>
</tr>
<tr>
<td>New Jersey:</td>
<td>Nathaniel Gorham,</td>
<td></td>
</tr>
<tr>
<td>Wil: Livingston,</td>
<td>Rufus King</td>
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<td>David Brearly, Wm.</td>
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<td>Paterson, Jona:</td>
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<td>Connecticut:</td>
<td>Dayton</td>
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<td>Wm: Saml. Johnson,</td>
<td></td>
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<td>Roger Sherman</td>
<td></td>
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<tr>
<td>Pennsylvania:</td>
<td>B. Franklin, Thomas</td>
<td>Maryland:</td>
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<td></td>
<td>Mifflin, Robt. Morris,</td>
<td>James McHenry, Dan</td>
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<td></td>
<td>Geo. Clymer, Thos. Fitzgerald</td>
<td>of St Thos. Jenifer,</td>
</tr>
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<td></td>
<td>Ingersoll, James</td>
<td>Danl Carroll</td>
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<td>Virginia:</td>
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<td></td>
<td>John Blair—,</td>
<td></td>
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<tr>
<td></td>
<td>James Madison Jr.</td>
<td></td>
</tr>
</tbody>
</table>

|                                | Dobbs Spaight, Hu Williamson     |
South Carolina:                 | J. Rutledge, Charles             |
|                                | Cotesworth Pinckney,             |
|                                | Charles Pinckney,                |
|                                | Pierce Butler                    |
Georgia:                        | William Few, Abr Baldwin         |
Handout B: Indian Removal, Constitutional Principles, and Civic Virtue

**Directions:** Given the following Constitutional principles, analyze the listed documents and determine which principles are either embedded in, or decidedly absent from, those documents. In the third column, provide a brief explanation.

**Constitutional Principles:** majority rule versus minority rights; representation; separation of powers; property rights

<table>
<thead>
<tr>
<th>Document</th>
<th>Constitutional Principles</th>
<th>Does the document reflect this principle? Why or why not?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andrew Jackson’s First and Second Messages to Congress</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Indian Removal Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Cherokee Nation v. Georgia</em> (1831) and <em>Worcester v. Georgia</em> (1832)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Treaty of New Echota</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Handout C: Andrew Jackson, First Annual Message to Congress Excerpts

December 8, 1829

In his first annual message to Congress in 1829, President Andrew Jackson proposed, as had his predecessor President James Monroe, that Indians be moved to areas west of the Mississippi. This excerpt from the address underscores his arguments for why he believed Indian removal was necessary.

The condition and ulterior destiny of the Indian tribes within the limits of some of our states have become objects of much interest and importance. It has long been the policy of government to introduce among them the arts of civilization, in the hope of gradually reclaiming them from a wandering life. This policy has, however, been coupled with another wholly incompatible with its success. Professing a desire to civilize and settle them, we have at the same time lost no opportunity to purchase their lands and thrust them farther into the wilderness. By this means they have not only been kept in a wandering state, but been led to look upon us as unjust and indifferent to their fate...

Our conduct toward these people is deeply interesting to our national character. Their present condition, contrasted with what they once were, makes a most powerful appeal to our sympathies. Our ancestors found them the uncontrolled possessors of these vast regions. By persuasion and force they have been made to retire from river to river and from mountain to mountain, until some of the tribes have become extinct and others have left but remnants to preserve for awhile their once terrible names. Surrounded by the whites with their arts of civilization, which, by destroying the resources of the savage, doom him to weakness and decay, the fate of the Mohegan, the Narragansett, and the Delaware is fast overtaking the Choctaw, the Cherokee, and the Creek. That this fate surely awaits them if they remain within the limits of the states does not admit of a doubt. Humanity and national honor demand that every effort should be made to avert so great a calamity as destruction of their tribes...

As a means of effecting this end, I suggest for our consideration the propriety of setting apart an ample district west of the Mississippi, and without [outside] the limits of any state or territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it, each tribe having a distinct control over the portion designated for its use. There they may be secured in the enjoyment of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes. There the benevolent may endeavor to teach them the arts of civilization, and, by promoting union and harmony among them, to raise up an interesting commonwealth, destined to perpetuate the race and to attest the humanity and justice of this government.

This emigration should be voluntary, for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers and seek a home in a distant land. But they should be
distinctly informed that if they remain within the limits of the States they must be subject to their laws. In return for their obedience as individuals they will without doubt be protected in the enjoyment of those possessions which they have improved by their industry. But it seems to me visionary to suppose that in this state of things claims can be allowed on tracts of country on which they have neither dwelt nor made improvements, merely because they have seen them from the mountain or passed them in the chase. Submitting to the laws of the States, and receiving, like other citizens, protection in their persons and property, they will ere long become merged in the mass of our population.

**Critical Thinking Questions**

1. What does Jackson promise?

2. What does he propose?

3. What does he require?
An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States, west of the river Mississippi, not included in any state or organized territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there; and to cause each of said districts to be so described by natural or artificial marks, as to be easily distinguished from every other.

SEC. 2. And be it further enacted, That it shall and may be lawful for the President to exchange any or all of such districts, so to be laid off and described, with any tribe or nation within the limits of any of the states or territories, and with which the United States have existing treaties, for the whole or any part or portion of the territory claimed and occupied by such tribe or nation, within the bounds of any one or more of the states or territories, where the land claimed and occupied by the Indians, is owned by the United States, or the United States are bound to the state within which it lies to extinguish the Indian claim thereto.

SEC. 3. And be it further enacted, That in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guaranty to them, and their heirs or successors, the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: Provided always, That such lands shall revert to the United States, if the Indians become extinct, or abandon the same.

SEC. 4. And be it further enacted, That if, upon any of the lands now occupied by the Indians, and to be exchanged for, there should be such improvements as add value to the land claimed by any individual or individuals of such tribes or nations, it shall and may be lawful for the President to cause such value to be ascertained by appraisement or otherwise, and to cause such ascertained value to be paid to the person or persons rightfully claiming such improvements. And upon the payment of such valuation, the improvements so valued and paid for, shall pass to the United States, and possession shall not afterwards be permitted to any of the same tribe.

SEC. 5. And be it further enacted, That upon the making of any such exchange as is contemplated by this act, it shall and may be lawful for the President to cause such aid and assistance to be furnished to the emigrants as may be necessary and proper to enable them to remove to, and settle in, the country for which they may have exchanged; and also, to give them such aid and assistance as may be necessary for their support and subsistence for the first year after their removal.
**SEC. 6.** And be it further enacted, That it shall and may be lawful for the President to cause such tribe or nation to be protected, at their new residence, against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatever.

**SEC. 7.** And be it further enacted, That it shall and may be lawful for the President to have the same superintendence and care over any tribe or nation in the country to which they may remove, as contemplated by this act, that he is now authorized to have over them at their present places of residence.
December 6, 1830

In his Second Annual Message, Andrew Jackson updated Congress on the plans for Indian removal.

It gives me pleasure to announce to Congress that the benevolent policy of the Government, steadily pursued for nearly thirty years, in relation to the removal of the Indians beyond the white settlements is approaching to a happy consummation. Two important tribes have accepted the provision made for their removal at the last session of Congress, and it is believed that their example will induce the remaining tribes also to seek the same obvious advantages.

The consequences of a speedy removal will be important to the United States, to individual States, and to the Indians themselves... By opening the whole territory between Tennessee on the north and Louisiana on the south to the settlement of the whites it will incalculably strengthen the southwestern frontier and render the adjacent States strong enough to repel future invasions without remote aid. It will relieve the whole State of Mississippi and the western part of Alabama of Indian occupancy, and enable those States to advance rapidly in population, wealth, and power. It will separate the Indians from immediate contact with settlements of whites; free them from the power of the States; enable them to pursue happiness in their own way and under their own rude institutions; will retard the progress of decay, which is lessening their numbers, and perhaps cause them gradually, under the protection of the Government and through the influence of good counsels, to cast off their savage habits and become an interesting, civilized, and Christian community. The waves of population and civilization are rolling to the westward, and we now propose to acquire the countries occupied by the red men of the South and West by a fair exchange, and, at the expense of the United States, to send them to land where their existence may be prolonged and perhaps made perpetual. Doubtless it will be painful to leave the graves of their fathers; but what do they more than our ancestors did or than our children are now doing? To better their condition in an unknown land our forefathers left all that was dear in earthly objects.

What good man would prefer a country covered with forests and ranged by a few thousand savages to our extensive Republic, studded with cities, towns, and prosperous farms embellished with all the improvements which art can devise or industry execute, occupied by more than 12,000,000 happy people, and filled with all the blessings of liberty, civilization and religion?

Can it be cruel in this Government when, by events which it can not control, the Indian is made discontented in his ancient home, to purchase his lands, to give him a new and extensive territory, to pay the expense of his removal, and support him a year in his new abode? How many thousands of our own people would gladly embrace the opportunity of removing to the West on such conditions! If the offers made to the Indians were extended to them, they would be hailed with gratitude and joy.
And is it supposed that the wandering savage has a stronger attachment to his home than the settled, civilized Christian? Is it more afflicting to him to leave the graves of his fathers than it is to our brothers and children? Rightly considered, the policy of the General Government toward the red man is not only liberal, but generous. He is unwilling to submit to the laws of the States and mingle with their population. To save him from this alternative, or perhaps utter annihilation, the General Government kindly offers him a new home, and proposes to pay the whole expense of his removal and settlement.

Critical Thinking Questions

1. In what ways do you think President Jackson considered the removal “generous”?

2. To what extent do you agree with his assessment of the removal plan?
As Indian Removal moved forward, the state of Georgia passed a series of laws designed to persuade the Cherokee to give up their lands and leave. Some of these laws re-drew the boundaries of Cherokee lands, banned whites from entering their lands without a permit, and forbade the Cherokee from digging for gold. In *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832), the U.S. Supreme Court considered the rights of Native American nations against the power of the states, as well as its own powers to enforce those rights.

**Cherokee Nation v. Georgia (1831) Background**

*The Cherokee Nation sought a federal injunction against laws passed by the state of Georgia, arguing deprivation of rights within its boundaries. The Supreme Court did not hear the case on its merits, ruling that it did not have jurisdiction to review the claims.*

**Majority Opinion, Chief Justice John Marshall (Excerpts)**

Do the Cherokees constitute a foreign state in the sense of the Constitution?

The counsel have shown conclusively that they are not a State of the union, and have insisted that, individually, they are aliens, not owing allegiance to the United States. An aggregate of aliens composing a State must, they say, be a foreign state. Each individual being foreign, the whole must be foreign.

This argument is imposing, but we must examine it more closely before we yield to it. The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. In the general, nations not owing a common allegiance are foreign to each other. The term foreign nation is, with strict propriety, applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else.

The Indian Territory is admitted to compose a part of the United States. In all our maps, geographical treatises, histories, and laws, it is so considered. In all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States, subject to many of those restraints which are imposed upon our own citizens. They acknowledge themselves in their treaties to be under the protection of the United States; they admit that the United States shall have the sole and exclusive right of regulating the trade with them, and managing all their affairs as they think proper; and the Cherokees, in particular, were allowed by the treaty of Hopewell, which preceded the Constitution, “to send a deputy of their choice, whenever they think fit, to
Congress.” Treaties were made with some tribes by the State of New York, under a then unsettled construction of the confederation by which they ceded all their lands to that State, taking back a limited grant to themselves in which they admit their dependence.

Though the Indians are acknowledged to have an unquestionable, and heretofore unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government, yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.

If it be true that the Cherokee Nation have rights, this is not the tribunal in which those rights are to be asserted. If it be true that wrongs have been inflicted, and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future.

The motion for an injunction is denied.

Worcester v. Georgia (1832) Background

Seven white missionaries, including Samuel Worcester, were indicted for “residing within the limits of the Cherokee nation without a license” and “without having taken the oath to support and defend the constitution and laws of the state of Georgia.” They appealed their case to the Supreme Court, arguing that the statute violated the U.S. Constitution as well as treaties between the United States and the Cherokee Nation and a Congressional act to regulate contact and trade with the Indian tribes.

The Supreme Court vacated Worcester’s conviction, declaring that the Georgia act interfered with the federal government’s authority and was unconstitutional. Georgia could not regulate activity on the Cherokee lands.

An excerpt of Chief Justice John Marshall’s opinion is below.

Majority Opinion, Chief Justice John Marshall (Excerpts)

Certain it is that our history furnishes no example, from the first settlement of our country, of any attempt, on the part of the Crown, to interfere with the internal affairs of the Indians farther than to keep out the agents of foreign powers who, as traders or otherwise, might seduct them into foreign alliances. The King purchased their lands when they were willing to sell, at a price they were willing to take, but never coerced a surrender of them. He also purchased their alliance and dependence by subsidies, but never intruded into the interior of their affairs or interfered with their self-government so far as respected themselves only.

The Treaty of Holston, negotiated with the Cherokees in July, 1791, explicitly recognising the national character of the Cherokees and their right of self-government, thus guarantying their lands, assuming the duty of protection, and of course pledging the faith of the United States for that protection, has been frequently renewed, and is now in full force.
To the general pledge of protection have been added several specific pledges deemed valuable by the Indians. Some of these restrain the citizens of the United States from encroachments on the Cherokee country, and provide for the punishment of intruders.

The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States, and provide that all intercourse with them shall be carried on exclusively by the Government of the Union.

The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the Government of the United States.
Selected excerpts from the treaty signed in Georgia in December 1835.

In 1835, the U.S. government negotiated a treaty with representatives of the Cherokee in Georgia. The representatives were there against the wishes of the majority of the Cherokee people, as well as their leader, Chief John Ross. The Treaty of New Echota exchanged the Cherokee lands in the east for five million dollars and lands west of the Mississippi. Chief Ross argued that the Treaty was a fraud and urged the U.S. Senate not to ratify the treaty. However, it was approved and President Jackson signed it into law. The Treaty provided a two-year period for Cherokee families to leave voluntarily, and gave them money for the journey. In the summer of 1838, the deadline passed. Jackson’s successor, President Martin Van Buren, ordered the U.S. Army to proceed with forced removal. This removal took place during the winter of 1838-1839. During the Trail of Tears, as it has come to be known, 14,000 men, women, and children were forced to march from their homes to lands in present-day Oklahoma. Four thousand people died.

**Article 1.**

The Cherokee nation hereby cede relinquish and convey to the United States all the lands owned claimed or possessed by them east of the Mississippi river, and hereby release all their claims upon the United States for spoliations of every kind for and in consideration of the sum of five millions of dollars to be expended paid and invested in the manner stipulated and agreed upon in the following articles.

**Article 2.**

Those individuals and families of the Cherokee nation that are averse to a removal to the Cherokee country west of the Mississippi and are desirous to become citizens of the States where they reside and such as are qualified to take care of themselves and their property shall be entitled to receive their due portion of all the personal benefits accruing under this treaty for their claims, improvements and per capita; as soon as an appropriation is made for this treaty.

Such heads of Cherokee families as are desirous to reside within the States of No. Carolina, Tennessee, and Alabama subject to the laws of the same; and who are qualified or calculated to become useful citizens shall be entitled, on the certificate of the commissioners to a preemption right to one hundred and sixty acres of land or one quarter section at the minimum Congress price; so as to include the present buildings or improvements of those who now reside there and such as do not live there at present shall be permitted to locate within two years any lands not already occupied by persons entitled to pre-emption privilege under this treaty and if two or more families live on the same quarter section and they desire to continue their residence in these States and are qualified as above specified they shall, on receiving their pre-emption certificate be entitled to the right of pre-emption to such lands as they may select not already taken by any person entitled to them under this treaty.
Article 14.

It is also agreed on the part of the United States that such warriors of the Cherokee nation as were engaged on the side of the United States in the late war with Great Britain and the southern tribes of Indians, and who were wounded in such service shall be entitled to such pensions as shall be allowed them by the Congress of the United States to commence from the period of their disability.

Article 16.

It is hereby stipulated and agreed by the Cherokees that they shall remove to their new homes within two years from the ratification of this treaty and that during such time the United States shall protect and defend them in their possessions and property and free use and occupation of the same and such persons as have been dispossessed of their improvements and houses; and for which no grant has actually issued previously to the enactment of the law of the State of Georgia, of December 1835 to regulate Indian occupancy shall be again put in possession and placed in the same situation and condition, in reference to the laws of the State of Georgia, as the Indians that have not been dispossessed; and if this is not done, and the people are left unprotected, then the United States shall pay the several Cherokees for their losses and damages sustained by them in consequence thereof. And it is also stipulated and agreed that the public buildings and improvements on which they are situated at New Echota for which no grant has been actually made previous to the passage of the above recited act if not occupied by the Cherokee people shall be reserved for the public and free use of the United States and the Cherokee Indians for the purpose of settling and closing all the Indian business arising under this treaty between the commissioners of claims and the Indians.
Handout B: Slavery and the Constitution

**Directions:** Locate each of the following constitutional provisions, then explain how it could be read to protect, or not to protect, the institution of slavery. After completing the chart, respond to the question at bottom.

<table>
<thead>
<tr>
<th>Constitution Citation</th>
<th>Constitutional Phrase</th>
<th>How did this protect (or not protect) slavery?</th>
<th>Was this amended later? If so, how?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Preamble</td>
<td></td>
<td></td>
<td>This has not been changed</td>
</tr>
<tr>
<td>2. Article I, Section 2, Clause 3</td>
<td></td>
<td></td>
<td>Changed by Section 2 of the 14th Amendment.</td>
</tr>
<tr>
<td>3. Article I, Section 9, Clause 1</td>
<td></td>
<td></td>
<td>Congress outlawed the importation of slaves in 1808.</td>
</tr>
<tr>
<td>4. Article IV, Section 2, Clause 3</td>
<td></td>
<td></td>
<td>Changed by the 13th Amendment.</td>
</tr>
<tr>
<td>5. Article V</td>
<td></td>
<td></td>
<td>This provision has not been changed.</td>
</tr>
</tbody>
</table>
### Constitution Citations and Phrases

<table>
<thead>
<tr>
<th>Constitution Citation</th>
<th>Constitutional Phrase</th>
<th>How did this protect (or not protect) slavery?</th>
<th>Was this amended later? If so, how?</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. The Fifth Amendment</td>
<td></td>
<td></td>
<td>This provision has not been changed. The Fourteenth Amendment applied a similar limit to states.</td>
</tr>
<tr>
<td>7. The Tenth Amendment</td>
<td></td>
<td></td>
<td>This provision has not been changed.</td>
</tr>
</tbody>
</table>

### Was the Constitution (prior to the ratification of the Thirteenth Amendment abolishing slavery) a pro-slavery document?

Mark the place on the scale that represents your response:

- **The Constitution was written to ensure the end of slavery.**
- **The Constitution was a pro-slavery document.**
### Handout C: Documents Summary Table

**Directions:** Use this form to develop an overview of the evidence available.

<table>
<thead>
<tr>
<th>Document name &amp; date</th>
<th>Author</th>
<th>Answer to scaffolding question</th>
<th>How each side might use the document to answer the central question (OR: What is the main idea of this document?)</th>
</tr>
</thead>
</table>
The period between the ratification of the Constitution and the Civil War was marked by increased efforts for the abolition of slavery. As the country grew, free states began to outnumber slave states in number and population. The anti-slavery forces gained political strength. The Northwest Ordinance prohibited slavery in the Northwest Territory and established a boundary between free and slave territories. The Missouri Compromise prohibited slavery in a prescribed portion of the former Louisiana Territory. This created vast new territories that would become free states upon admission to the Union.

However, while slave states remained steadfast in their claim that slavery was a state issue, they did help to pass two federal fugitive slave laws, gaining national recognition of their legal rights against abolitionists who helped slaves escape. Federal law now required the return of the slaves to their owners.

In the midst of this turmoil, Dred Scott, a slave, filed a case in Federal Circuit Court in St. Louis, Missouri. Scott claimed that because he had lived for ten years in both a free state (Illinois) and a free territory (Wisconsin), he had been made a free man. His owner did not deny that Scott and his family had resided in Wisconsin and Illinois, but claimed Scott lacked standing to sue, as he was not a citizen of the United States.

The Court looked at the case in the broadest possible terms, using it as a platform to decide: 1) Did Scott have standing to sue? 2) Were blacks entitled to rights as citizens? 3) Could Congress restrict the rights of states to decide if they would be slave or free?
Handout E: Slavery Advertisement and Handbill

A Runaway Slave Advertisement, 1769

1. What is this ad for, and who wrote it?

The Virginia Gazette; Williamsburg, September 14, 1769. Reproduction of newspaper. Courtesy of the Virginia Historical Society, Richmond

Anti-Abolitionist Handbill, 1837

1. This poster mentions the “rights of the States.” What specific right does this mean?
2. Is there a potential conflict between the “rights of the States” and “The Union forever!”?
The Declaration of Independence, 1776

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 among Men, deriving their just powers from the consent of the governed...

1. According to this document, what is the purpose of government?

Draft Declaration of Independence, 1776

Note: This section of Thomas Jefferson’s original draft Declaration of Independence was deleted by the Continental Congress.

He [the British King] has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither...Determined to keep open a market where MEN should be bought & sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce.

1. With what does Jefferson charge King George III?

2. How does this deleted paragraph inform the meaning of “all men” in the final Declaration of Independence?
Handout G: Laws About Slavery

**The Missouri Compromise, 1820**

[I]n all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the state, contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited: Provided always, That any person escaping into the same, from whom labour or service is lawfully claimed, in any state or territory of the United States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labour or service as aforesaid.

1. Can Congress limit slavery in the Louisiana Territory under the provisions in the U.S. Constitution?

**Fugitive Slave Act of 1850**

[W]hen a person held to service or labor in any State or Territory of the United States, has heretofore or shall hereafter escape into another State or Territory of the United States, the person or persons to whom such service or labor may be due ... may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners ... for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive...

1. How does the Fugitive Slave Act of 1850 expand the protections given to slave owners in the U.S. Constitution and the Missouri Compromise?
**Handout H: Dred Scott v. Sanford (1857), Majority and Dissenting Opinions (7-2)**

*Dred Scott v. Sanford (1857), Majority Opinion (7-2), Chief Justice Taney*

The language of the Declaration of Independence is ... conclusive: ... ‘We hold these truths to be self-evident: that all men are created equal.’ ... [I]t is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration ... They perfectly understood the meaning of the language they used, and how it would be understood by others; and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which, by common consent, had been excluded from civilized Governments and the family of nations, and doomed to slavery...

The brief preamble [to the Constitution] ... declares that it is formed by the people of the United States; that is to say, by those who were members of the different political communities in the several States; and its great object is declared to be to secure the blessings of liberty to themselves and their posterity. It speaks in general terms of the people of the United States, and of citizens of the several States, when it is providing for the exercise of the powers granted or the privileges secured to the citizen. It does not define what description of persons are intended to be included under these terms, or who shall be regarded as a citizen and one of the people...

[T]here are two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed.

[T]he right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every State that might desire it, for twenty years. And the Government in express terms is pledged to protect it in all future time, if the slave escapes from his owner. This is done in plain words—too plain to be misunderstood. And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

**Critical Thinking Questions**

1. According to this document, how and why does the Constitution protect slavery?

2. According to this document, why were slaves not considered to be people?
Dred Scott v. Sanford (1857), Dissenting Opinion, Justice Curtis

[The] question is whether any person of African descent, whose ancestors were sold as slaves in the United States, can be a citizen of the United States. If any such person can be a citizen, this plaintiff has the right to the judgment of the court that he is so, for no cause is shown by the plea why he is not so, except his descent and the slavery of his ancestors...

To determine whether any free persons, descended from Africans held in slavery, were citizens of the United States ... at the time of the adoption of the Constitution of the United States, it is only necessary to know whether any such persons were citizens of either of the States under the Confederation at the time of the adoption of the Constitution.

Of this there can be no doubt. At the time of the ratification of the Articles of Confederation, all free native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other necessary qualifications possessed the franchise of electors, on equal terms with other citizens...

Did the Constitution of the United States deprive them or their descendants of citizenship?

That Constitution was ordained and established by the people of the United States, through the action, in each State, or those persons who were qualified by its laws to act thereon in behalf of themselves and all other citizens of that State. In some of the States, as we have seen, colored persons were among those qualified by law to act on this subject. These colored persons were not only included in the body of “the people of the United States” by whom the Constitution was ordained and established, but, in at least five of the States, they had the power to act, and doubtless did act, by their suffrages, upon the question of its adoption. It would be strange if we were to find in that instrument anything which deprived of their citizenship any part of the people of the United States who were among those by whom it was established.

Critical Thinking Questions

1. What historical evidence does the author use to support the claim that “colored persons” were citizens?

2. How does this dissent differ from the majority opinion?
Handout I: Speeches on the *Dred Scott* Decision: Frederick Douglass and Abraham Lincoln

**Frederick Douglass, Speech on the *Dred Scott* Decision, 1857**

I have a quarrel with those who fling the Supreme Law of this land between the slave and freedom ...[The Constitution says] “We, the people”—not we, the white people—not we, the citizens, or the legal voters—not we, the privileged class, and excluding all other classes but we, the people; not we, the horses and cattle, but we the people—the men and women, the human inhabitants of the United States, do ordain and establish this Constitution.

I ask, then, any man to read the Constitution, and tell me where, if he can, in what particular that instrument affords the slightest sanction of slavery?

Where will he find a guarantee for slavery? Will he find it in the declaration that no person shall be deprived of life, liberty, or property, without due process of law? Will he find it in the declaration that the Constitution was established to secure the blessing of liberty? Will he find it in the right of the people to be secure in their persons and papers, and houses, and effects? Will he find it in the clause prohibiting the enactment by any State of a bill of attainder?

These all strike at the root of slavery, and any one of them, but faith-fully carried out, would put an end to slavery in every State in the American Union.

1. **According to Douglass, what are the most important guarantees of the Constitution?**

**Abraham Lincoln, Speech on the *Dred Scott* Decision, 1857**

Chief Justice Taney, in delivering the opinion of the majority of the Court, insists at great length that Negroes were no part of the people who made, or for whom was made, the Declaration of Independence, or the Constitution of the United States ...[T]he Chief Justice does not directly assert, but plainly assumes, as a fact, that the public estimate of the black man is more favorable now than it was in the days of the Revolution. This assumption is a mistake. ...In those days, our Declaration of Independence was held sacred by all, and thought to include all; but now, to aid in making the bondage of the Negro universal and eternal, it is assailed, and sneered at, and construed, and hawked at, and torn, till, if its framers could rise from their graves, they could not at all recognize it. ...I had thought the Declaration contemplated the progressive improvement in the condition of all men everywhere; but no, it merely “was adopted for the purpose of justifying the colonists in the eyes of the civilized world in withdrawing their allegiance from the British crown, and dissolving their connection with the mother country.” Why, that object having been effected some eighty years ago, the Declaration is of no practical use now—mere rubbish—old wadding left to rot on the battle-field after the victory is won.
And now I appeal to all—are you really willing that the Declaration shall be thus frittered away?—thus left no more at most, than an interesting memorial of the dead past? ...shorn of its vitality, and practical value; and left without the germ or even the suggestion of the individual rights of man in it?

1. How does Lincoln’s reading of the Declaration of Independence differ from Chief Justice Taney’s majority opinion?
Whereas, on the twenty-second day of September, in the year of our Lord one thousand eight hundred and sixty-two, a proclamation was issued by the President of the United States, containing, among other things, the following, to wit:

“That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free …

“Now, therefore I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-in-Chief, of the Army and Navy of the United States in time of actual armed rebellion against the authority and government of the United States, and as a fit and necessary war measure for suppressing said rebellion, do… order and designate as the States and parts of States wherein the people thereof respectively, are this day in rebellion against the United States, the following, to wit:

Arkansas, Texas, Louisiana, …Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia, (except the forty-eight counties designated as West Virginia…) and which excepted parts, are for the present, left precisely as if this proclamation were not issued.

... I do order and declare that all persons held as slaves within said designated States, and parts of States, are, and henceforward shall be free; and that the Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.

And I hereby enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defence; and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages.

And I further declare and make known, that such persons of suitable condition, will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.

And upon this act, sincerely believed to be an act of justice, warranted by the Constitution, upon military necessity, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God.
Critical Thinking Questions

1. The proclamation states, “...such persons of suitable condition will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service. And upon this act, sincerely believed to be an act of justice, warranted by the Constitution, upon military necessity...” What made Lincoln decide that emancipation was a military necessity?

2. In his December, 1861 State of the Union message, President Lincoln wrote, “I have... in every case thought it proper to keep the integrity of the Union prominent as the primary object of the contest on our part, leaving all questions which are not of vital military importance to the more deliberate action of the Legislature.” In this message, what was he stating as the primary object of the war?

3. In what ways was the Emancipation Proclamation a turning point in the course of the war? In the history of the United States?
Handout B: *Plessy v. Ferguson (1896)*–Case Background

Although the Declaration of Independence affirmed that “all men are created equal,” and had inalienable rights including liberty, African Americans were systematically denied their liberty with the institution of slavery. Even after the Civil War and the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments, segregation was a fact of life in the United States. Throughout the country, the races remained separated by both custom and law.

With the end of Reconstruction, every southern state, as well as some northern ones, passed what came to be termed Jim Crow laws. These policies required segregation in public places. African Americans were denied equal access to public facilities like transportation, education, and the voting booth. In 1878, the Supreme Court held that states could not require integration on interstate common carriers. In 1890, the Court held that Mississippi could require segregation on modes of intrastate transportation.

Five years later, Homer Plessy, a resident of Louisiana, decided to challenge a Louisiana law requiring segregation on railcars by purchasing a train ticket and sitting in a “whites only” car. Because Plessy was an “octoroon” (1/8th black), he was subject to the black codes of Louisiana. When he was questioned as to his status, he admitted to being an octoroon, and was arrested when he refused to leave the car. He appealed his case to the Supreme Court of Louisiana and eventually the United States Supreme Court, claiming that the Louisiana law violated the Fourteenth Amendment.
Handout C: The Declaration, The Constitution, and Personhood

The Declaration of Independence, 1776

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….

1. In what manner does the Declaration of Independence understand all people to be equal?

The Constitution of the United States, 1789

Article I, Section 2, Paragraph 3: Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed three fifths of all other Persons.

1. Who are the “all other Persons” to which this document refers?

2. How were these “all other persons” counted for the purpose of apportioning a state's representatives and direct taxes?
Handout D: Thomas Jefferson Note and Letter

Thomas Jefferson, *Notes on the State of Virginia*, 1787

Comparing [Negros] by their faculties of memory, reason, and imagination, it appears to me, that in memory they are equal to the whites; in reason much inferior, as I think one could scarcely be found capable of tracing and comprehending the investigations of Euclid; and that in imagination they are dull, tasteless, and anomalous... This unfortunate difference of colour, and perhaps of faculty, is a powerful obstacle to the emancipation of these people.

1. **Contrast Jefferson’s views on racial equality with the assertion of the Declaration of Independence (Handout C).**

Thomas Jefferson to Henri Gregoire, 1809

Be assured that no person living wishes more sincerely than I do, to see a complete refutation of the doubts I have myself entertained and expressed on the grade of understanding allotted to them [Negroes] by nature, and to find that in this respect they are on a par with ourselves. My doubts were the result of personal observation on the limited sphere of my own State, where the opportunities for the development of their genius were not favorable, and those of exercising it still less so. I expressed them therefore with great hesitation; but whatever be their degree of talent it is no measure of their rights. Because Sir Isaac Newton was superior to others in understanding, he was not therefore lord of the person or property of others. On this subject they are gaining daily in the opinions of nations, and hopeful advances are making towards their re-establishment on an equal footing with the other colors of the human family.

1. **How does Jefferson clarify his beliefs on the racial inferiority of blacks as stated in Notes on the State of Virginia (above)?**
Handout E: Amendments and Federalism

The Tenth Amendment, 1791

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

1. Restate the Tenth Amendment in your own words.

Section of the Fourteenth Amendment, 1868

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

1. What does the Fourteenth Amendment guarantee to residents of every state?
2. Does Section 5 of this document change the meaning of the Tenth Amendment (above)?
Handout F: The Legacy of *Plessy*

“At the Bus Station,” 1940

1. How does this 1940 photograph reveal the legacy of the Plessy decision?
Handout G: *Plessy v. Ferguson* (1896) — Majority Opinion (6-1)

The object of the [Fourteenth] Amendment was undoubtedly to enforce the absolute equality of the two races before the law, but, in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation, in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power...

We consider the underlying fallacy of [Plessy’s] argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it...

The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other’s merits, and a voluntary consent of individuals...

Legislation is powerless to eradicate racial instincts, or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the constitution of the United States cannot put them upon the same plane.

**Critical Thinking Questions**

1. What kinds of laws does the Court say that state legislatures have the rightful power to pass?
2. What does the Court say is the basic flaw in Plessy's argument?
3. What does the Court argue about laws that try to abolish racial prejudices?
4. Why is this decision said to have affirmed the doctrine of “separate but equal”?
The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty. But in view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful...

Sixty millions of whites are in no danger from the presence here of eight millions of blacks. The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law. What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens? That, as all will admit, is the real meaning of such legislation as was enacted in Louisiana.

Critical Thinking Questions

1. What does the dissenting opinion mean by “Our constitution is color-blind”?
2. What does the dissenting opinion claim is the “real meaning” of the Louisiana segregation law?
Handout I: Document Analysis Form

**Directions:** After you have read the Case Background, use this form to categorize and analyze *Plessy v. Ferguson* documents in Handouts C - H.

<table>
<thead>
<tr>
<th>Custom</th>
<th>Favors Plessy</th>
<th>Include explanation or note.</th>
<th>Favors Ferguson</th>
<th>Include explanation or note.</th>
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<tbody>
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<tr>
<td>Precedent</td>
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<tr>
<td>Federalism</td>
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Handout J: Andrew Johnson and the Civil War Amendments

Andrew Johnson took the Presidential oath of office six days after the Confederate surrender at Appomattox had ended the Civil War. Johnson claimed that he would carry out Lincoln’s plan for Reconstruction. However, he actually went in a different direction. While he welcomed the end of slavery, Johnson saw blacks as inferior and believed that efforts to protect their rights would slow the rebuilding process. “White men alone must manage the South,” he once said. Johnson was unconcerned as states implemented Black Codes, laws restricting the rights of blacks. In contrast, Republicans in Congress hoped to severely punish the treason of the Confederate leaders and guarantee full civil and political rights for freedmen.

“Restoration,” Not Reconstruction

Johnson, like Lincoln, maintained throughout the war that the Southern states had not actually seceded. The unlawful rebellion of certain people in the Southern states had deprived those states of the republican form of government guaranteed by the Constitution. For Johnson, the purpose of the war was to restore the Union and its republican form of government—not to protect the rights of blacks. In his first Annual Message to Congress, he said, “The Constitution is the work of ‘the people of the United States,’ and it should be as indestructible as the people.”

The Constitution contained no set of rules for states leaving the Union, nor for their re-entry. Which branch of the national government would be in charge of Reconstruction? As President, Johnson maintained that Congress had no role in what he called the “restoration” process. While Congress was not in session in 1865, Johnson planned to restore the Southern states to the Union based mainly on their ratification of the Thirteenth Amendment which ended slavery.

While Johnson had opposed emancipation early in his career, and had owned four slaves, he supported the Thirteenth Amendment because he saw the end of slavery as necessary to restore the Union. He also believed that ending the free labor of slavery would enable the middle and working classes to displace the rule of the South’s planter aristocracy, a group he hated. In his first message to Congress on December 4, 1865, he said, “The adoption of the [Thirteenth] Amendment reunites us beyond all power of disruption; it heals the wound that is still imperfectly closed: it removes slavery, the element which has so long perplexed and divided the country...” All of the former Confederate states were ready to reenter the Union by the end of the year.

Members of Congress believed the legislative branch should guide Reconstruction. Among the actions Congress took to assert its power were extension of the Freedmen’s Bureau, the Civil Rights Act of 1866, and several Reconstruction Acts. In the struggle between presidential authority and Congressional power, Johnson vetoed all of these bills. Congress quickly overrode his vetoes.

The Fourteenth Amendment

Congress hoped to make protection of blacks’ civil rights permanent through the Fourteenth Amendment.
The Fourteenth Amendment was the first constitutional amendment to place limits on state governments. It defined citizenship and required that “no state shall make or enforce any law” that denied due process and equal protection of the laws. States that denied blacks the right to vote would have their representation in Congress reduced proportionally. Ex-Confederate leaders would not be able to hold office.

The Fourteenth Amendment was a significant revision to the constitutional principle of federalism. The amendment dramatically limited the powers of states in an unprecedented way. Seceded states would not be admitted back to the Union unless they ratified it.

Johnson objected to the Fourteenth Amendment for several reasons. He argued that it was improper to amend the Constitution when Southern states were not represented in Congress. In addition, he believed that each state should be able to determine who had the right to vote. There is no constitutional role for a President in the amendment process, but Johnson sent Congress a special message explaining his disapproval of the amendment. Over the next few months he advised Southern legislatures to reject it.

The Conflict Intensifies

Of the former Confederate states, only Tennessee ratified the Fourteenth Amendment. It was readmitted to the Union in 1866. When the Republicans gained strength in congressional elections that year, the relationship between President and Congress became even more strained. The new Congress added more conditions that the Southern states had to meet in order to rejoin the Union. Under federal supervision as military districts, states slowly fulfilled the requirements. By 1868, seven more states had been readmitted.

Johnson and Congress continually clashed over Reconstruction. Congress eventually impeached him, though the vote fell one short of the two-thirds majority required to remove him from office.

Johnson saw a limited role for the federal government. He accepted the end of slavery but sought to “restore” the South to the Union while preserving states’ powers. The Republicans hoped to “reconstruct” the South in a manner that would both punish the Confederates and assure Republican political power by protecting the rights of blacks. Their conflict set the stage for an impeachment trial of the President, and reflected social and legal tensions that continue into the twenty-first century.

Critical Thinking Questions

1. How was Johnson’s goal for Reconstruction different from that of Republicans in Congress?
2. According to Johnson, what was the purpose of the Civil War?
3. In what ways is our nation still dealing with issues over which Johnson and Congress clashed?
The Union of the United States of America was intended by its authors to last as long as the States themselves shall last. “The Union shall be perpetual” are the words of the Confederation. “To form a more perfect Union,” by an ordinance of the people of the United States, is the declared purpose of the Constitution...

The maintenance of the Union brings with it “the support of the State governments in all their rights,” but it is not one of the rights of any State government to renounce its own place in the Union or to nullify the laws of the Union...

The best security for the perpetual existence of the States is the “supreme authority” of the Constitution of the United States. The perpetuity of the Constitution brings with it the perpetuity of the States; their mutual relation makes us what we are, and in our political system their connection is indissoluble...

The next step which I have taken to restore the constitutional relations of the States has been an invitation to them to participate in the high office of amending the Constitution...The adoption of the amendment reunites us beyond all power of disruption; it heals the wound that is still imperfectly closed: it removes slavery, the element which has so long perplexed and divided the country; it makes of us once more a united people, renewed and strengthened, bound more than ever to mutual affection and support...

When, at the first movement toward independence, the Congress of the United States instructed the several States to institute governments of their own, they left each State to decide for itself the conditions for the enjoyment of the elective franchise...

But while I have no doubt that now, after the close of the war, it is not competent for the General Government to extend the elective franchise in the several States, it is equally clear that good faith requires the security of the freedmen in their liberty and their property, their right to labor, and their right to claim the just return of their labor...

Our Government springs from and was made for the people--not the people for the Government. To them it owes allegiance; from them it must derive its courage, strength, and wisdom. But while the Government is thus bound to defer to the people, from whom it derives its existence, it should, from the very consideration of its origin, be strong in its power of resistance to the establishment of inequalities... Here there is no room for favored classes or monopolies; the principle of our Government is that of equal laws and freedom of industry.

Critical Thinking Questions

1. Why did Johnson support the Thirteenth Amendment? Why did he oppose the Fourteenth Amendment?
**Handout L: Analyzing Johnson’s First Annual Message to Congress, 1865**

**Directions:** President Johnson explained his approach to Reconstruction (or “restoration,” as he preferred to call it) in his first Annual Message to Congress in December 1865. Complete the table below to analyze excerpts from Johnson’s restoration plan. Use additional paper, if needed.

<table>
<thead>
<tr>
<th>Topic</th>
<th>Excerpt</th>
<th>Do you believe Johnson interpreted the Constitution correctly? Explain.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Permanence of the Union and importance of the Constitution</td>
<td>The Union of the United States of America was intended by its authors to last as long as the States themselves shall last. “To form a more perfect Union,” ... is the declared purpose of the Constitution...</td>
<td></td>
</tr>
<tr>
<td>2. Relationship of the States to the central government</td>
<td>[I]t is not one of the rights of any State government to renounce its own place in the Union or to nullify the laws of the Union... The best security for the perpetual existence of the States is the “supreme authority” of the Constitution of the United States...</td>
<td></td>
</tr>
<tr>
<td>3. The right to vote</td>
<td>[The Founders] left each State to decide for itself the conditions for the enjoyment of the elective franchise.</td>
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</table>

Put this in your own words.

Do you believe Johnson interpreted the Constitution correctly? Explain.
<table>
<thead>
<tr>
<th>Topic</th>
<th>Excerpt</th>
</tr>
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<tbody>
<tr>
<td>5. Justice for the freedmen</td>
<td>Good faith requires the security of the freedmen in their liberty and their right to labor, and their right to claim the just return of their labor.</td>
</tr>
<tr>
<td>6. Equal laws</td>
<td>Our Government springs from and was made for the people—not the people for the Government. Here there is no room for favored classes or monopolies, the principle of our Government is that of equal laws and freedom of industry.</td>
</tr>
</tbody>
</table>

4. Amending the Constitution to abolish slavery

The adoption of the amendment reunites us beyond all power of disruption; it heals the wound that is still imperfectly closed; it removes slavery, the element which has so long perplexed and divided the country; it makes of us once more a united people...
Handout A: The Declaration and Martin Luther King, Jr.

Excerpts from The Declaration of Independence, 1776

“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 among Men, deriving their just powers from the consent of the governed.”

Excerpts from Letter from Birmingham Jail, 1963 by Martin Luther King, Jr.

“I have no despair about the future. I have no fear about the outcome of our struggle in Birmingham, even if our motives are at present misunderstood. We will reach the goal of freedom in Birmingham, and all over the nation, because the goal of American freedom. Abused and scorned though we may be, our destiny is tied up with America’s destiny. Before the pilgrims landed at Plymouth, we were here. Before the pen of Jefferson etched the majestic words of the Declaration of Independence across the pages of history, we were here. For more than two centuries our forebears labored in this country without wages; they made cotton king; they built the homes of their masters while suffering gross injustice and shameful humiliation-and yet out of a bottomless vitality they continued to thrive and develop. If the inexpressible cruelties of slavery could not stop us, the opposition we now face will surely fail. We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands.”

Excerpts from the “I Have a Dream Speech”, 1963 by Martin Luther King, Jr.

“So we’ve come here today to dramatize a shameful condition. In a sense we’ve come to our nation’s capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was the promise that all men, yes, black men as well as white men, would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness.

It is obvious today that America has defaulted on this promissory note in so far as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked “insufficient funds.” But we refuse to believe that the bank of justice is bankrupt. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. And so we have come to cash this check, a check that will give us upon demand the riches of freedom and the security of justice.”
Critical Thinking Questions

1. What documents does Martin Luther King, Jr., refer to several times? Why?

2. What constitutional principles does Martin Luther King, Jr., appeal to many times? Does King think that those constitutional principles apply to all people equally?

3. Does Martin Luther King, Jr., support or reject the American Dream for African-Americans?

4. Why did Native Americans and American women appeal to American Founding documents and constitutional principles when arguing for equality and justice?
Handout B: Jim Crow Laws and Brown v. Board of Education (1954)–Case Background

After the Civil War, the Fourteenth Amendment was ratified to grant citizenship to former slaves and protect them from civil rights violations in their home states. Public schools were relatively rare throughout the United States, but were often segregated by race where they existed. The same Congress that passed the Fourteenth Amendment created racially segregated schools for the District of Columbia.

Beginning in 1877, many states passed “Jim Crow” laws requiring segregation in public places. Jim Crow laws were adopted in every southern state as well as some in the North. Louisiana’s policy requiring that blacks sit in separate railcars from whites was challenged and upheld in the Supreme Court case Plessy v. Ferguson (1896). The Court held that there was nothing inherently unequal—or anything unconstitutional—about separate accommodations for races. This decision established the rule that separate facilities in public accommodations were legal as long as they were equal: “separate but equal.”

In the twentieth century, the National Association for the Advancement of Colored People (NAACP) began a litigation campaign designed to bring an end to state mandated segregation, calling attention to the shabby accommodations provided for blacks, as well as arguing the damaging psychological effects that segregation had on black school children. One case was brought on behalf of Linda Brown, a third-grader from Topeka, Kansas. Several additional school segregation cases were combined into one, known as Brown v. Board of Education. This case reached the Supreme Court in 1953.

In the fall of 1950, Oliver Brown, Linda’s father, attempted to enroll her in Sumner Elementary School, a few blocks from their home in an integrated neighborhood. She was not allowed to enroll, however, because African American students were required to attend the segregated Monroe Elementary School. Linda had to walk six blocks, and through a railway switchyard, just to get to the bus stop for her ride to Monroe. Having already made great strides in integration of their schools, Topeka was a good candidate for a place where separate could be equal. Monroe and Sumner schools were found to be equal in physical facilities, curriculum, and staff. However, can a policy that requires racial segregation in school, even if the schools themselves are essentially equal, be consistent with the Equal Protection guarantee of the Fourteenth Amendment? This was the question for the five similar cases that were combined in Brown v. Board of Education of Topeka. The Supreme Court decided the question in 1954.
Critical Thinking Questions

1. What were “Jim Crow” laws? How did they relate to *Plessy v. Ferguson* (1896) and *Brown v. Board of Education* (1954)?

2. What had been the Supreme Court’s ruling in *Plessy v. Ferguson* (1896)?

3. Do you think the Supreme Court should have decided *Brown v. Board of Education* based on the precedent of *Plessy v. Ferguson*, or based on some other standard? Explain.
# Handout C: Documents Summary Table

**Directions:** Use this form to develop an overview of the evidence available.

<table>
<thead>
<tr>
<th>Document name, date, &amp; author (if provided)</th>
<th>Answer to related question(s)</th>
<th>What is the main idea of this document?</th>
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<tbody>
<tr>
<td>Virginia Criminal Code, 1847</td>
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<tr>
<td>Section of the Fourteenth Amendment, 1868</td>
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<td><em>Plessy v. Ferguson</em> (1896), Majority Opinion</td>
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<td><em>Plessy v. Ferguson</em> (1896), Dissenting Opinion</td>
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<tr>
<td><em>Washington, D.C. Public Schools, 1st Div-Class Making Geometric Forms with Paper</em>, 1899</td>
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<td><em>Crowded Segregated Classroom,</em> ca. 1940s</td>
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<td>Segregation Laws Map, 1953</td>
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<tr>
<td><em>Brown v. Board of Education</em> (1954), Unanimous Majority Opinion</td>
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<td><em>Brown II</em> (1955), Majority Opinion</td>
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<tr>
<td>“Supreme Court Decision,” 1954</td>
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Handout D: State and Federal Law

Virginia Criminal Code, 1847

Any white person who shall assemble with slaves, [or] free Negros ... for the purpose of instructing them to read or write ... shall be punished by confinement in the jail ... and by fine...

1. What does this law reveal about African Americans’ access to education in mid-nineteenth century Virginia?

Section of the Fourteenth Amendment, 1868

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

1. What was the historical context of the passage of this amendment?

2. What level of government does this amendment limit?

3. What prohibitions did it create?
Handout E: *Plessy v. Ferguson* (1896), Majority and Dissenting Opinions

**Majority Opinion, *Plessy v. Ferguson* (1896)**

The object of the [Fourteenth] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a co-mingling of the two races upon terms unsatisfactory to either.... Laws permitting, and even requiring, the separation [of races] in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power...

1. Restate this opinion in your own words.


[In the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law... The destinies of the two races, in this country, are indissolubly linked together, and the interests of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law.]

1. Compare and contrast the ideas in this comment with those in the Fourteenth Amendment (Handout C).
Handout F: Images of Segregation

Washington, D.C. Public Schools, 1st Div-Class Making Geometric Forms with Paper, 1899

1. Look closely at details in this photograph. How much space seems to be available for each student? What do you notice about classroom furnishings and materials?

2. Describe the condition of this classroom using two or three adjectives.

Crowded Segregated Classroom, ca. 1940s

1. Look closely at details in this photograph. How much space seems to be available for each student? What do you notice about classroom furnishings and materials?

2. Describe the condition of this schoolhouse using two or three adjectives.
1. How does this map reflect the legacy of *Plessy v. Ferguson*?
Handout H: Court Cases: *Brown* and *Brown II*

*Browm v. Board of Education* (1954), Unanimous Majority Opinion

In approaching this problem, we cannot turn the clock back to 1868 when the [Fourteenth] Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments.... In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms...

To separate [students] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.... Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority...

We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated ... are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

1. How did the Brown decision overturn *Plessy v. Ferguson* (Handout D) Majority Opinion?
2. On what grounds did the Court base its decision?
3. How does the Fourteenth Amendment (Handout C) provide a basis for this decision?

*Brown II* (1955), Majority Opinion

*Note: After the 1954 decision in Brown v. Board of Education declared state mandated segregation in public schools unconstitutional, the case was reargued to determine how to correct the violations.*

[T]he cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases.

1. What did the Supreme Court order the District Courts to do?
2. How does this document reveal the Court’s dependence on other branches and levels of government for enforcement of its decisions?
1. Identify the hands in the cartoon and their symbolic relationship to *Brown v. Board of Education* (1954).
**Handout J: Primary Sources on the Right to Petition and Assemble Peaceably**

**Directions:** Read the following statements about the right to petition (ask) the government and the right to assemble. Answer the questions that follow on a separate sheet of paper.

**Selection 1: Magna Carta (1215)**

“... if we, or our justices, or our bailiffs or any one of our officers, shall in anything be at fault towards anyone, or shall have broken any one of the articles of this peace or of this security, and the offense be notified to four barons of the foresaid five and twenty, the said four barons shall repair to us (or our justices, if we are out of the realm) and, laying the transgression before us, petition to have that transgression redressed without delay.”

**Selection 2: The First Amendment to the U.S. Constitution (1791)**

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

**Selection 3: De Jonge v. Oregon (1957)**

“The right of peaceable assembly is a right cognate [equal] to those of free speech and free press and is equally fundamental... It follows from these considerations that, consistently with the Federal Constitution, peaceable assembly for lawful discussion cannot be made a crime. The holding of meetings for peaceable political action cannot be proscribed [prohibited].”

**Critical Thinking Questions**

1. What five rights are protected by the First Amendment?
2. In the excerpt from the Magna Carta, what rights are listed/implied?
3. Paraphrase this statement: “Congress shall make no law ... abridging ... the right of the people peaceably to assemble...”
4. In the excerpt from De Jonge v. Oregon, what did the Supreme Court decision explain about the right to assemble?
5. Are there any limitations on the types of assembly that people can have? If so, what are they?
6. Paraphrase this statement: “Congress shall make no law ... abridging ... the right of the people ... to petition the government for a redress of grievances.”
7. List some groups that have exercised these rights throughout American history?
Handout K: Perseverance

Directions: Read each of the quotes below. Select one quote and write a journal response focusing on what it means to act with perseverance.

Perseverance is more prevailing than violence; and many things which cannot be overcome when they are together, yield themselves up when taken little by little.
—Plutarch, Greek biographer

Courage and perseverance have a magical talisman, before which difficulties disappear and obstacles vanish into air.
—John Quincy Adams, 6th President of the United States

Press on: nothing in the world can take the place of perseverance. Talent will not; nothing is more common than unsuccessful men with talent. Genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of educated derelicts. Persistence and determination alone are omnipotent.
—Calvin Coolidge, 30th President of the United States

Perseverance is a great element of success. If you only knock long enough and loud enough at the gate, you are sure to wake up somebody.
—Henry Wadsworth Longfellow, American poet

Just remember, you can do anything you set your mind to, but it takes action, perseverance, and facing your fears.
—Gillian Anderson, American actress

If your determination is fixed, I do not counsel you to despair. Few things are impossible to diligence and skill. Great works are performed not by strength, but perseverance.
—Samuel Johnson, English author

I do not think there is any other quality so essential to success of any kind as the quality of perseverance. It overcomes almost everything, even nature.
—John D. Rockefeller, American philanthropist
Handout L: Focus Questions

Directions: Define the term “perseverance,” then answer the questions below.

1. Where have you heard the word “persevere” or “perseverance” before?
2. What is the difference between “persistence” and “perseverance”?
3. Who are some people who have persevered?
4. Look at the various goals pursued. Are some “better” than others?
5. Can dedication to a purpose be bad?
6. In what areas of your life have you persevered?
7. Is there a difference between “obstinacy” and “perseverance”?
8. For what ideals should we persevere?
9. Does a persevering person ever give up?
10. How did the people who participated in the Civil Rights movement persevere?
Handout M: Selma to Montgomery—Crossing the Bridge

They slowly marched toward the city. Their feet pounded the ground as their hearts pounded in their chests. Hundreds prepared for the moment they would reach Selma, but none could have imagined the reality of that moment. They knew there would be resistance, as there had been on every other occasion, but they also knew they must persevere if things were to change.

Topping the hill, they saw the force awaiting their arrival. On horseback and on foot, Alabama state troopers waited for the marchers on the Edmund Pettus Bridge, armed with billy clubs and tear gas. The troopers called for the group to disperse as the marchers knelt to pray. The tear gas filled the air, the billy clubs struck, the horses trampled bodies, and the screams rang through the Alabama air. The marchers retreated from the bridge, but they knew they would return one day.

The demonstration that ended so violently on Sunday, March 7, 1965, was for a seemingly simple cause: the right to vote. Although it was illegal, some southern state and city governments refused to allow African Americans to vote, either through deceptive laws or harassment. In 1965, civil rights organizations focused their efforts on Selma, Alabama. After numerous failed attempts to register black voters, the Southern Christian Leadership Conference (SCLC), led by Martin Luther King, Jr., and the Student Nonviolent Coordinating Committee (SNCC) arranged a demonstration to protest the discrimination. They would march to Montgomery, the state capital, and petition for fair voting laws. The first attempt resulted in “Bloody Sunday,” but the protestors were determined. They had a right to petition their government and to assemble. They would cross the bridge.

The activists persevered. The organizations planned another march for Tuesday, March 9. They knew the state would prohibit them from crossing the bridge, but their voices would be heard. Tuesday morning, Dr. King led a group of two thousand protestors to the Edmund Pettus Bridge. Again, state troopers met them and ordered them to disperse. The marchers prayed and then left the bridge to avoid further violence.

Throughout the week, television viewers across the nation watched the news footage of state troopers violently attacking the marchers in Selma, Alabama. The conflict was no longer in a faraway town; it was right in the middle of most American living rooms. More importantly, it was in President Lyndon Johnson’s living room. The events horrified him, and he immediately began a support network for the marchers. Johnson devoted much time to the issue in the days following the demonstration.

He also began fervently organizing the passage of the Voting Rights Act of 1965. The president’s administration urged Congress to pass such a bill earlier but received little support. The events in Selma shocked the nation into action, and the bill was revived. Johnson presented it to a joint session of Congress on March 15. He stated, “What happened in Selma is part of a far larger movement which reaches into every section and state of America. It is the effort of American Negroes to secure for themselves the full blessings of American life. Their cause must be our cause too. Because it is not just Negroes,
but really it is all of us, who must overcome the crippling legacy of bigotry and injustice. And we shall overcome.”

With support from the Johnson administration and coverage across the nation, the leaders planned for another demonstration. They would deliver the voting rights petition to Alabama’s Governor George Wallace, a staunch anti-civil rights politician. This time, the organizations appealed to the federal courts for protection during the march. The state claimed that the march would impede traffic, while the protestors argued their right to assemble and petition. Federal District Court Judge Frank M. Johnson, Jr. presided over the case. Despite great pressure from local officials, he ruled that the protestors’ right to assemble prevailed over the state’s concern of traffic. The march was on, this time with the protection of the federal government.

Two weeks after Bloody Sunday, more than three thousand protestors crossed the Edmund Pettus Bridge in Selma, Alabama, on their way to Montgomery. Troops surrounded the bridge, much as they did two weeks earlier, but this time, they were there to protect the marchers. The next day, as the crisp, cold air filled their lungs and bit their noses, the marchers walked from dawn to dusk. Volunteers prepared camps along the way in which the demonstrators could sleep. On the morning of March 23, they awoke to rain and bitter cold. They tromped through mud and slept in fields. The third day offered clear skies and comfortable weather. As the group approached Montgomery, their numbers began to swell. The four hundred marchers who began that morning were accompanied by an additional four thousand at nightfall.

Five days and fifty miles later, between ten and twenty thousand civil rights demonstrators gathered in Alabama’s capital city. Governor Wallace watched from his window as the mass assembled on the capitol steps. The governor refused to see the petitioners unless the petitioners were from Alabama, and the group was removed from the capital area. After several hours, the governor admitted the petitioners to the building, and his assistant offered to receive the petition.

Dr. King addressed the crowd that evening. He encouraged them, “Today I want to tell the city of Selma, today I want to say to the state of Alabama, today I want to say to the people of America and the nations of the world, that we are not about to turn around. We are on the move now.” Five months later, Congress passed the Voting Rights act of 1965. The act allowed federal oversight of elections and guaranteed the end of unreasonable voter registration restrictions.

Bloody Sunday brought national attention to the plight of African Americans in the South, but the Selma-to-Montgomery march demonstrated the determination of those involved in the civil rights movement. They refused to be silenced, beaten, or ignored. They brought their grievances before the government in a petition and assembled to deliver that petition despite attacks. They demanded the rights guaranteed to them by the Constitution of the United States. The activists persevered in their efforts and received the rewards. They never gave up, and they crossed the bridge.
Critical Thinking Questions

1. In what ways did the Selma to Montgomery marchers persevere?

2. Imagine what would have happened if the marchers had not taken the initiative and persevered in their march on Montgomery. How do you think the outcome may have been different, if at all?

3. The marchers faced a number of obstacles as they pursued their goal. Have you ever persevered in the face of overwhelming odds? What was the result? Explain.
Handout N: Analysis – What Happened Between Selma and Montgomery?

Directions: Analyze the events of the Selma to Montgomery March by referring to the narrative *Selma to Montgomery: Crossing the Bridge* (Handout L) to complete the following information.

1. Who started the movement?

2. When did the action take place?

3. Why did the group assemble, protest, and petition?

4. What was the group’s goal?

5. What types of action did they take?

6. How did the government react to this movement?

7. What was the final outcome of this movement?
Handout A: Voting Rights, Women, and the Nineteenth Amendment

When the United States was founded, only adult white males who owned property could vote. The history of the amendments to the Constitution is, in one sense, a history of the expansion of certain political rights, including voting.

The Founders saw governments as existing to protect natural (or “inalienable”) rights. Natural rights are rights people are born with, and which can be exercised without anyone else taking any action. Examples are freedom of speech and freedom of religious belief. Political rights, such as voting, require positive action on the part of others – if you have a right to vote, then someone else must have the obligation to set up a polling place, count the votes, and do other things to secure that ability.

Many believe they have a constitutional right to vote in our democratic republic, but there is actually no such right listed in the Constitution. Rather, several amendments to the Constitution list conditions that the states cannot use to stop people from voting.

The Constitution may one day be amended to guarantee the right to vote, but the current document only says what the government cannot do to “deny or abridge” your rights.

Women and the Seneca Falls Convention: The Nineteenth Amendment

The first American women’s rights convention was held in 1848 in Seneca Falls, New York. It was organized by Elizabeth Cady Stanton, Lucretia Mott, and others. Frederick Douglass and Sojourner Truth were among the 300 people in attendance.

The delegates signed the Declaration of Sentiments and Resolutions, which used the same wording as the Declaration of Independence, to list the ways women had been deprived of equal rights, including “the inalienable right to the elective franchise.” The Declaration of Sentiments and Resolutions was signed by 100 people, including thirty-two men.

Women suffragists continued to campaign for the vote and other rights for the next eighty years. During that time, many states approved votes for women at the state level. After the Nineteenth Amendment was ratified in 1920, states could not stop people from voting because they were female.

Critical Thinking Questions

1. Write an eight-sentence summary of this article.

2. Susan B. Anthony said, “Suffrage is the pivotal right.” Write a one-paragraph response to this statement, based on your knowledge of the Constitution and on this article.
Handout B: Two Declarations

Declaration of Independence (1776) – Excerpts

IN CONGRESS, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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 among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.--Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries

Introduction

Explains why they wrote the Declarations of Independence. They justify the separation to the world.

Preamble

Explains that all people have equal inalienable rights. The purpose of government is to “secure” or protect these rights. Governments must protect the rights of the people. When governments do not do this, the people have the right and duty to change the government.
and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.

---

**Indictment**

This is a list of ways in which the king took away the colonists’ basic rights.
He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For Quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

This list further explains how the king took away the colonists’ basic rights.
He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this

**Denunciation**

Explains that the colonists have complained many times to Great Britain. The people in Great Britain have not listened to them.

**Conclusion**

This is the official declaration of independence from Great Britain. The united colonies have the power to do all the things independent countries can do.
Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

Georgia: Button Gwinnett, Lyman Hall, George Walton
North Carolina: William Hooper, Joseph Hewes, John Penn
South Carolina: Edward Rutledge, Thomas Heyward, Jr., Thomas Lynch, Jr., Arthur Middleton
Massachusetts: John Hancock
Maryland: Samuel Chase, William Paca, Thomas Stone, Charles Carroll of Carrollton
Pennsylvania: Robert Morris, Benjamin Rush, Benjamin Franklin, John Morton, George Clymer, James Smith, George Taylor, James Wilson, George Ross
Delaware: Caesar Rodney, George Read, Thomas McKean
New York: William Floyd, Philip Livingston, Francis Lewis, Lewis Morris
New Jersey: Richard Stockton, John Witherspoon, Francis Hopkinson, John Hart, Abraham Clark
New Hampshire: Josiah Bartlett, William Whipple
Massachusetts: Samuel Adams, John Adams, Robert Treat Paine, Elbridge Gerry
Rhode Island: Stephen Hopkins, William Ellery
Connecticut: Roger Sherman, Samuel Huntington, William Williams, Oliver Wolcott
New Hampshire: Matthew Thornton

Signatures
The 56 signatures on the Declaration appear in the positions indicated.
Declaration of Sentiments, Seneca Falls Convention, July 1848 – Excerpts

When, in the course of human events, it becomes necessary for one portion of the family of man to assume among the people of the earth a position different from that which they have hitherto occupied, but one to which the laws of nature and of nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes that impel them to such a course.

We hold these truths to be self-evident: that all men and women are created equal; that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted, deriving their just powers from the consent of the governed. Whenever any form of government becomes destructive of these ends, it is the right of those who suffer from it to refuse allegiance to it, and to insist upon the institution of a new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they were accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their duty to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of the women under this government, and such is now the necessity which constrains them to demand the equal station to which they are entitled.

The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her. To prove this, let facts be submitted to a candid world.

- He has never permitted her to exercise her inalienable right to the elective franchise.
- He has compelled her to submit to laws, in the formation of which she had no voice.
- He has withheld from her rights which are given to the most ignorant and degraded men - both natives and foreigners.
- Having deprived her of this first right of a citizen, the elective franchise, thereby leaving her without representation in the halls of legislation, he has oppressed her on all sides.
- He has made her, if married, in the eye of the law, civilly dead.
- He has taken from her all right in property, even to the wages she earns.
- He has made her, morally, an irresponsible being, as she can commit many crimes with impunity, provided they be done in the presence of her husband. In the covenant of marriage, she is compelled to promise obedience to her husband, he becoming, to all intents and purposes, her master - the law giving him power to deprive her of her liberty, and to administer chastisement...
- After depriving her of all rights as a married
woman, if single and the owner of property, he has taxed her to support a government which recognizes her only when her property can be made profitable to it.

- He has monopolized nearly all the profitable employments, and from those she is permitted to follow, she receives but a scanty remuneration.
- He closes against her all the avenues to wealth and distinction, which he considers most honorable to himself. As a teacher of theology, medicine, or law, she is not known.
- He has denied her the facilities for obtaining a thorough education - all colleges being closed against her...
- He has created a false public sentiment, by giving to the world a different code of morals for men and women, by which moral delinquencies which exclude women from society, are not only tolerated but deemed of little account in man...

Firmly relying upon the final triumph of the Right and the True, we do this day affix our signatures to this declaration.

Lucretia Mott
Harriet Cady Eaton
Margaret Pryor
Elizabeth Cady Stanton
Eunice Newton Foote
Mary Ann M’Clintock
Margaret Schooley
Martha C. Wright
Jane C. Hunt
Amy Post
Catharine F. Stebbins
Mary Ann Frink
Lydia Mount
Delia Mathews
Catharine C. Paine
Elizabeth W. M’Clintock
Malvina Seymour
Phebe Mosher
Catharine Shaw
Deborah Scott
Sarah Hallowell
Mary M’Clintock
Mary Gilbert
Sophrone Taylor
Cynthia Davis
Hannah Plant
Lucy Jones
Sarah Whitney
Mary H. Hallowell
Elizabeth Conklin
Sally Pitcher
Mary Conklin
Susan Quinn
Mary S. Mirror
Phebe King
Julia Ann Drake
Charlotte Woodward
Martha Underhill
Dorothy Mathews
Eunice Barker
Sarah R. Woods
Lydia Gild
Sarah Hoffman
Elizabeth Leslie
Martha Ridley
Rachel D. Bonnel
Betsey Tewksbury
Rhoda Palmer
Margaret Jenkins
Cynthia Fuller
Mary Martin
P. A. Culvert
Susan R. Doty
Rebecca Race
Sarah A. Mosher
Mary E. Vail
Lucy Spalding
Lavinia Latham
Sarah Smith
Eliza Martin
Maria E. Wilbur
Elizabeth D. Smith
Caroline Barker
Ann Porter
Experience Gibbs
Antoinette E. Segur
Hannah J. Latham
Sarah Sisson
The following are the names of the gentlemen present in favor of the movement:

Richard P. Hunt          William S. Dell          S.E. Woodworth
Samuel D. Tillman       James Mott                Edward F. Underhill
Justin Williams         William Burroughs          George W. Pryor
Elisha Foote            Robert Smallbridge        Joel D. Bunker
Frederick Douglass      Jacob Mathews             Isaac Van Tassel
Henry Seymour           Charles L. Hoskins         Thomas Dell
Henry W. Seymour         Thomas M’Clintock         E. W. Capron
David Spalding          Saron Phillips           Stephen Shear
William G. Barker        Jacob P. Chamberlain      Henry Hatley
Elias J. Doty            Jonathan Metcalf          Azaliah Schooley
John Jones               Nathan J. Milliken

Critical Thinking Questions

1. In the margins, identify the different sections of the Declaration of Sentiments and label as follows: Introduction – Preamble – Indictment – Conclusion – Signatures.

2. Compare the Declaration of Sentiments to the Declaration of Independence. What similarities do you find?

3. What is the significance of the signatures?

4. Why did Stanton and the other delegates decide to write in the style that they did?
Handout C: Suffrage Amendments

Directions: Read the following amendments to the Constitution and paraphrase each. Identify similarities and differences among these document excerpts.

Amendment XV (1870)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Amendment XIX (1920)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Amendment XXIV (1964)

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.
In 1838 in the Massachusetts State House, a bustling crowd, including men and women, legislators and citizens, silenced their voices to hear that of a woman who had come to deliver anti-slavery petitions and to demand justice for all Americans. Angelina Grimké would be the first woman ever to speak before a legislature. Her testimony lasted three days.

“... If it is a self evident truth that all men, every where and of every color are born equal, and have an inalienable right to liberty, then it is equally true that no man can be born a slave, and no man can ever rightfully be reduced to involuntary bondage and held as a slave...” Grimké had never wavered for fear of the consequences when she wrote these words a few years before her appearance. She had grown accustomed to holding unpopular views and was adamant in her pursuit of justice, despite criticism from family, friends, and fellow Southerners.

The daughter of a prominent judge and plantation owner, Grimké grew up in South Carolina and witnessed firsthand the cruelties of slavery. As she grew older, her condemnation of the practice deepened. In 1829 at the age of twenty-four, she moved to Philadelphia to join her older sister, Sarah, in the Society of Friends (Quakers). Together, they began a lifelong mission to expose the injustices of slavery.

In 1835, Grimké inadvertently found herself in the national spotlight. She had written a letter to William Lloyd Garrison, the editor of The Liberator, an abolitionist publication. In her letter, she vigorously and eloquently supported Garrison's anti-slavery efforts, never intending that the letter be published. She was shocked when Garrison decided to do just that and include her name. As the daughter of a prominent Southern slaveholder, she faced an uproar. Even those closest to her urged her to take back her statements. She refused. Instead, Grimké expanded her arguments into a thirty-six-page pamphlet.

Grimké's pamphlet, Appeal to the Christian Women of the South, analyzed slavery from a biblical perspective. While some slaveholders justified the practice with examples from the Bible, she systematically examined each biblical justification. As a result of her studies, she derived standards for slavery from each situation and comparing the biblical example to American slavery. American slavery failed each test. Grimké argued, “The attributes of justice and mercy are shadowed out in the Hebrew code; those of injustice and cruelty, in the Code Noir of America.”

Grimké understood that women felt powerless to change things since they could not vote, but she believed that women could effect change in other ways. She pleaded with Southern Christian women, “What can I say more, my friends, to induce you to set your hands, and heads, and hearts, to this great work of justice and mercy.” Women could read, pray, speak, and act on the subject. She suggested they teach their slaves to read and write and to set them free if possible. She admitted that such actions were against the law but claimed, “such wicked laws ought to be no barrier in the way of your duty.”

Determined to inspire action, Grimké declared, “But you will perhaps say, such a course of conduct would inevitably expose us to great suffering. Yes! My Christian friends, I believe
it would, but this will not excuse you or anyone else for the neglect of duty.” She referred to the prophets who were tortured and killed “because they exposed and openly rebuked public sins; they opposed public opinion; had they held their peace, they all might have lived in ease and died in favor with a wicked generation.”

Grimké anticipated the protests and questions and reminded her audience of an example from the Old Testament: “Who was chosen to deliver the whole Jewish nation from that murderous decree of Persia’s King, which wicked Haman had obtained by calumny and fraud? It was a woman; Esther the Queen; yes, weak and trembling woman was the instrument appointed by God, to reverse the bloody mandate of the eastern monarch, and save the whole visible church from destruction.”

The pamphlet brought Grimké nationwide recognition as well as scathing criticism. She and her sister, Sarah, began lecturing in New England in the late 1830s. They traveled to more than sixty-seven towns, conveying the shocking details of the slavery system they witnessed as children. Sometimes they lectured from the pulpit. Many times, their words were met with violence. They were pelted with vegetables and faced angry crowds throwing rocks. Resolutely, they believed that nothing they could suffer would compare to what those who were bound by slavery endured. The Northern audiences grew as the lectures attracted more and more abolitionists, both men and women.

In a time when women did not speak in front of mixed audiences, Grimké’s lectures caused a stir across the North. Some pastors balked, and many people were scandalized. In 1837, a “Pastoral Letter” was published; it barred women from speaking from the pulpit in churches. Grimké now found herself an outsider in both the North and the South.

Such opposition only strengthened Grimké’s resolve to fight injustice on all fronts. In addition to her work against the injustices of slavery, she served as one of the first women’s rights advocates. She believed that all human beings deserve equal treatment. As part of her work, she understood that education paved the way for change. To affect the next generation, the Grimké sisters opened a school in New Jersey. They were among the first to accept girls and boys as students, an unusual practice in the 1840s. She continued her work in education throughout the Civil War.

For thirty-one years, Angelina Grimké lived in the spotlight of the abolitionist movement. Her contributions to the movements for equal rights, equal treatment, and equal justice for all are still felt today. She refused to accept the social norm, and, instead, relied upon her understanding of the Declaration of Independence, the Constitution, and the Bible to guide her principles. Grimké broke out of the mold of the proper Southern woman and dared to declare her belief that slavery was wrong. She devoted her life to seeking justice for all human beings and led the way for others to do the same.

Critical Thinking Questions

1. What motivated Grimké in her cause(s)?

2. What is the relationship between abolition and women’s suffrage in Angelina Grimké’s life and beliefs?
Alice Paul was born in 1885 on a New Jersey farm. Her parents encouraged her love of learning, and her mother often brought her along to women’s suffrage meetings. Paul attended prestigious universities and earned a master’s degree in sociology. In 1907, Paul moved to England, where she continued her studies in economics and political science.

While in England, Paul joined a group working to win voting rights for women in Britain. She was arrested three times while attending demonstrations. In prison, Paul and her fellow activists began hunger strikes to bring attention to their imprisonment. British authorities forced the women by putting tubes down their nostrils. They often vomited during the violent process.

When Paul came back to the U.S. in 1910, she turned her attention to the fight for women’s suffrage in America. She wrote her Ph.D. dissertation on the legal position of women in Pennsylvania. She joined the National American Woman Suffrage Association (NAWSA) and chaired the committee working for a federal amendment, but by that time the NAWSA had all but given up on a federal amendment and was instead focusing efforts on the state level.

Paul saw Woodrow Wilson’s upcoming presidential inauguration as an opportunity to bring national attention to the cause of voting rights for women. She organized a parade to coincide with the inaugural parade. The parade was a historic spectacle with more than twenty floats and over 5,000 marchers.

The parade was not without its challenges. Paul recalled years later: “We did hear a lot of shouted insults... the usual things about why aren’t you home in the kitchen where you belong.” Other men shoved and tripped the marchers, while police did little to assist. One hundred marchers were taken to the hospital.

Paul went to the White House two weeks after the parade to talk to Wilson. The President promised to give the idea of voting rights for women his “most careful consideration,” but this promise did little to satisfy Paul and the suffragists.

Paul soon grew frustrated by NAWSA, finding the group’s efforts to be disorganized and inadequate, and in 1913 founded her own suffrage organization called the National Woman’s Party. Noting that she did not look at all like a political agitator, the Chicago Tribune described her as a “delicate slip of a girl.” But “Miss Paul,” as she preferred to be called, was in fact an agitator of the most effective kind.

Paul began to organize demonstrations and parades in support of women’s suffrage. She wrote and distributed leaflets and organized daily pickets in front of the White House. The picket signs addressed Wilson directly and used his own words to make their case, “Mr. President, you say liberty is the fundamental demand of the human spirit,” and “Mr. President, how long must women wait for liberty?” Demonstrators burned copies of Wilson’s speeches, calling them “meaningless words” on democracy. They even burned an effigy of Wilson at the White House gates.

Unlike NAWSA, Paul’s party did not suspend their efforts during World War I. They believed World War I made women’s suffrage even more vital. The war was being fought because “the world must
be made safe for democracy,” as Wilson had said, but the suffragists claimed the United States was itself not a democracy, as twenty million women were without the means for self-government.

Growing frustrated, police announced that picketers would be given six months in prison. The next day, October 17, 1917, Paul defiantly led a march to the White House. The marchers, including Paul, were sentenced to six months in jail.

During her sentence in Virginia, Paul was placed in solitary confinement. Her diet of bread and water weakened her so much that she was taken to the prison hospital. But instead of eating more, Paul decided to use the strategy she’d learned in England eight years before: a hunger strike. Just as the British had done, prison officials force-fed Paul to prevent her from dying and becoming a martyr for the cause. Paul wrote to a friend of her experience during the force feeding, describing the constant “cries and shrieks and moans.” She later explained that the form of non-violent protest was “the strongest weapon left with which to continue... our battle.”

Paul’s actions alienated some who believed the suffragists were becoming too militant. On the other hand, Paul and the 500 others who were arrested for speaking, publishing, peaceably assembling, and petitioning became known as political prisoners, which mobilized their cause. Wilson eventually acknowledged public opinion and ordered the suffragists released from prison. Paul’s efforts, coupled with NAWSA’s newly focused and effective strategy of lobbying on the local, state, and federal levels, had led the suffragists to victory. Wilson lent his support to the Women’s Suffrage Amendment in January of 1918. Congress approved it within a year, and it was ratified by the states in 1920.

Critical Thinking Questions

1. How did Paul’s National Woman’s Party work for women’s suffrage?

2. Paul’s militant actions alienated some people. Why do you think Paul chose to continue them?
“[T]he time is past when we should say: ‘Men and women of America, look upon that wonderful idea up there: see, one day it will come down.’ Instead, the time has come to shout aloud in every city, village and hamlet, and in tones so clear and jubilant that they will reverberate from every mountain peak and echo from shore to shore: ‘The Woman’s Hour has struck.’”

The women listening that day drew strength and inspiration from their speaker, Carrie Chapman Catt. They had assembled at the National American Woman Suffrage Association (NAWSA) meeting in Atlantic City and were prepared for action. For sixty-eight years, American women had been fighting for the right to vote. There had been minor successes and major setbacks. It was 1916, and only a few far western states, such as Wyoming and Utah, had granted women the right to vote. Most women in the rest of the nation could have been jailed if they had even tried.

Over the years, the disjointed work of suffragist organizations had generated few productive results. Some leaders believed in attacking the issue first at the state level. Others believed the only solution was an amendment to the U.S. Constitution, and focused their energies on petitioning Congress. A few wanted to follow the example of English suffragists and took a militant approach: the National Woman’s Party, for example, orchestrated sit-ins and hunger strikes. Some of the most reserved suffragists spread word of their cause through organized afternoon teas and small parades.

The movement that began in the 1840s, with the first women’s rights convention in 1848 at Seneca Falls, New York, seemed to be failing by the early 1900s.

Carrie Chapman Catt was determined to save it. Catt was an educated woman with a strong will and fighting spirit. She grew up in Charles City, Iowa and graduated from Iowa State College in 1880, the only woman in her class. In short order, she became a teacher, then principal, then superintendent for Mason City schools. After one year of marriage, she was left a widow, and decided to devote her time and energy to a public cause. She joined the Iowa Woman’s Suffrage Association in 1886 and quickly rose through the ranks to positions of leadership.

After remarrying in 1890, Catt began working with suffragists nationwide. Her reputation as a speaker grew, and two years later, Susan B. Anthony asked her to testify before Congress on the proposed constitutional amendment. By 1900, Catt had been elected to succeed Anthony as president of the NAWSA. During her tenure, she became known as a strong leader, whose vision and ability to compromise strengthened the organization.

In 1904, the illness of her husband led Catt to resign her position. Devastated by his death the following year as well as that of Anthony in 1906, she retreated to her suffrage work overseas and spent the next nine years working as president of the International Woman Suffrage Alliance, which she had helped organize in 1902.

Catt remained a dynamic spokesperson for the woman’s suffrage movement. While she was abroad, the NAWSA (and consequently the movement) struggled under divided leadership. Catt returned home in 1915 to resume her position as president. A year later, at the 1916 Atlantic City convention, she unveiled a daring new strategy, which she dubbed the “Winning Plan.”
Catt’s Winning Plan contained a bold initiative. It called for a federal amendment to the United States Constitution as its ultimate goal, but it also encouraged the development of state and local initiatives. She wanted to attack the issue on all fronts. If a state offered equal voting rights, the women in that state should campaign for the federal amendment. If the state appeared open to the idea of voting rights, women should work together and organize at the state level. If not, women should devise smaller, local campaigns. What Catt realized was critical: all of these organizations would play a role in the drive for ratification.

The NAWSA adopted the strategy, and Catt traveled the country encouraging cooperative, persistent action. The Winning Plan clearly defined the goals of the NAWSA and, more importantly, the ways to achieve them. Catt provided an overall strategy and a role for each group in the push for women’s suffrage. In four years, her vision would become reality.

While establishing a base of state and local support, Catt approached congressional leaders with the proposed amendment. She impressed President Wilson and many members of Congress, and the NAWSA lobbied tirelessly. Catt made the decision to curb their petitions, however, while the country was embroiled in World War I.

The contributions that women made to the war on the home front may have helped NAWSA when it resumed its lobbying in 1919. The amendment passed in both houses in June, and President Wilson, who respected and admired Catt, came out in favor of the amendment. It moved quickly to the states for ratification.

Over the next year, state and local support became critical to the initiative’s success. Anti-suffragists organized rallies to persuade legislators to vote against the amendment. Some legislators left their states in order to prevent the necessary quorum. Without the minimum number of representatives present in order to vote, the amendment might stall or be defeated. In response, local suffrage associations monitored the referendum process to ensure its validity.

On August 24, 1920, Tennessee became the vital thirty-sixth state to ratify. Two days later—seventy-two years after the start of the suffrage movement—the Nineteenth Amendment was adopted:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.

Catt’s Winning Plan had won. “The Woman’s Hour” had struck.

Critical Thinking Questions

1. The suffrage movement began in the 1840s. The Nineteenth Amendment was not ratified until 1920. What factors made its ratification and adoption possible after seventy-two years?

2. What do you imagine would have happened if Carrie Chapman Catt had not developed and shared her “Winning Plan”?

3. Why do you think President Wilson resisted Alice Paul, but eventually supported Carrie Chapman Catt?
Handout G: Nametags

Angelina Grimké
(1805 – 1879)

Carrie Chapman Catt
(1859 – 1947)

Alice Paul
(1885 – 1977)

Judge John Faucheraud Grimké
(1752 – 1819)
Mary Smith Grimké  
(1764 – 1839)

Sarah Moore Grimké  
(1792–1873)

Pelters

Trippers
Pastors

Insulters

Woodrow Wilson
(1856 – 1924)

Susan B. Anthony
(1820-1906)
Angelina Grimké

“Daughters of a prominent South Carolina slaveholding family, Sarah and Angelina Grimké had become dissatisfied with what seemed to them the vacuous life of the upper-class Southern girl ... The sisters became converts to Garrison’s abolition crusade and in 1836 were recruited to become antislavery agents speaking to groups of women. Angelina Grimké turned out to be an orator of considerable power. During her speaking tour a number of men began coming to hear her, so that she found herself lecturing to what the nineteenth century called “promiscuous audiences,” that is, consisting of both men and women ... The ‘mere circumstances of sex does not give to man higher rights and responsibilities, than to woman,’ Angelina insisted ... This gospel equality took her a long way: by the end of the paragraph she was insisting that women had a right to a voice in all the laws by which they were governed in church or state, even a right to sit in Congress or be president.”


Carrie Chapman Catt

“Catt had been an active suffragist since the mid-1880s and prominent in the national movement for more than two decades. When Susan B. Anthony retired in 1900, Catt was her chosen successor. She brought administrative order to the NAWSA, [during] her first presidency from 1900 to 1905 ... The 1915 referendum campaign in New York [for women’s suffrage] showcased her achievements and provided a model that was followed closely in many other states. It also made Carrie Chapman Catt the logical leader for a revitalized NAWSA ... Catt had won the support of the NAWSA leadership for a strategic approach to building an inexorable momentum for the federal amendment. The “Winning Plan” involved carefully disciplined and centrally directed effort in which each state and local suffrage group had a role ... In states where women could vote, NAWSA would lobby and petition their delegations to introduce and fight for the passage of the federal amendment. Where referenda were unlikely, suffragists were charged with working for presidential suffrage or the right to vote in party primaries ... The critical nature of these campaigns would not be self-evident to their opponents as long as they could “keep so much ‘suffrage noise’ going all over the country that neither the enemy nor friends will discover where the real battle is.”


Alice Paul

“Alice Paul had lived in England and participated in the British suffrage movement. A Quaker social worker, Paul went to England in 1907 just in time to witness the meteoric rise of Emmaline Pankhurst and to join in mass demonstrations, also experiencing jail, hunger strikes, and force feeding. Paul joined the moribound NAWSA Congressional committee and convinced NAWSA leaders to let her organize a suffrage parade on the day before the inauguration of President-
elect Woodrow Wilson. She set up headquarters in Washington, D.C., raised over $25,000, and began an aggressive lobbying and publicity campaign for a federal amendment. When Woodrow Wilson arrived for his inaugural on March 3, 1913, his greeters had already left to see the woman suffrage parade. Five thousand women stole the scene, as they pressed their way through a hostile crowd down Pennsylvania Avenue. Aware that the NAWSA was unwilling to build on this momentum, Paul and Lucy Burns established a separate organization, the Congressional Union, in April 1913 to provide a new base for national activity ... [The two organizations] remained bitter competitors through the rest of the suffrage campaign and well beyond ... The split with the Congressional Union had the important impact of reigniting NAWSA interest in a federal amendment, but the two organizations were never able to cooperate ... The Congressional Union and its successor, the National Woman's Party (NWP), provided a radical voice with the suffrage movement redefining the parameters of the debate.”


**Judge John Grimké**

*Father of Sarah and Angeline Grimké*

“Judge Grimké became quite ill and Sarah accompanied him to Philadelphia for medical treatment. The treatment was unsuccessful and after several months, Judge Grimké died in New Jersey in 1819. Sarah, by this time, had enjoyed living in a place where others shared her views on slavery and she decided to leave Charleston behind and relocate to Philadelphia where she became a vocal abolitionist. She left the Episcopal church and became a Quaker. With Sarah’s encouragement, Angelina soon joined her sister. They lived together and became outspoken advocates for ending slavery. As they became more well-known and were invited to address more and more groups, they ran into another sort of prejudice. They were scorned for their activism, not so much because of what they believed, but because they were women. Women who held strong opinions and were willing - even adamant - about expressing them in public forums were the brunt of anger and ridicule. Sarah and Angelina began to see that in order to proclaim their message against slavery, they also had to address the inequities faced by women. Sarah wrote, “All I ask of our brethren is that they will take their feet from off our necks and permit us to stand upright on the ground which God intends for us to occupy”


**Mary Grimké**

*Mother of Sarah and Angeline Grimké*

“In March of 1838, just a few months after Angelina Grimké’s historic appearance before the Massachusetts Senate, she wrote to tell her mother that she was going to marry fellow abolitionist Theodore Weld. Many of the Grimké sisters’ critics had made an issue of their unmarried state. Women who had stepped so far outside their “sphere,” they said, were obviously unsuitable for marriage. The response of Angelina’s mother Mary Grimké, a South Carolina slaveholder’s wife, reveals her enduring love for her militant abolitionist daughter despite their wide differences of opinion. She also expressed her relief that Angelina would have a male “protector” and hoped that as a married woman she would retreat from public life. Although marriage and the long years of childbearing that followed did greatly reduce Angelina Grimké’s
public activities, neither of the sisters ever abandoned her belief in the equality of women, a belief born in the antislavery movement.


Sarah Grimké

“Daughters of a prominent South Carolina slaveholding family, Sarah and Angelina Grimké had become dissatisfied with what seemed to them the vacuous life of the upper-class Southern girl. Sarah in particular resented the fact that the good advanced education given to her brothers was denied to her. In her late twenties she left home for Philadelphia and was later joined by the younger Angelina. The sisters became converts to Garrison’s abolition crusade and in 1836 were recruited to become antislavery agents speaking to groups of women... To Sarah, men’s assumptions of superiority over women was not natural but usurped. It had resulted in multiple oppressions, from the unequal laws of marriage to the low wages of working women... The worst consequence was that women themselves internalized male belief in their inferiority... ‘I’ll ask no favors for my sex,’ was her essential message to men. ‘All I ask of our brethren is, that they take their feet from off our necks, and permit us to stand upright on the ground which God designed for us to occupy.’”


Pelters

*(From Handout D)* The pamphlet brought Grimké nationwide recognition as well as scathing criticism. She and her sister, Sarah, began lecturing in New England in the late 1830s. They traveled to more than sixty-seven towns, conveying the shocking details of the slavery system they witnessed as children. Sometimes they lectured from the pulpit. Many times, their words were met with violence. They were pelted with vegetables and faced angry crowds throwing rocks.

Trippers

*(From Handout E)* Alice Paul’s parade on President Wilson’s inauguration day was not without its challenges. Paul recalled years later: “We did hear a lot of shouted insults... the usual things about why aren’t you home in the kitchen where you belong.” Other men shoved and tripped the marchers, while police did little to assist. One hundred marchers were taken to the hospital.

Pastors

*(From Handout D)* In a time when women did not speak in front of mixed audiences, Grimké’s lectures caused a stir across the North. Some pastors balked, and many people were scandalized. In 1837, a “Pastoral Letter” was published; it barred women from speaking from the pulpit in churches. Grimké now found herself an outsider in both the North and the South.


Insulters

*(From Handout E)* Alice Paul’s parade on President Wilson’s inauguration day was not without its challenges. Paul recalled years later: “We did hear a lot of shouted insults... the usual
things about why aren’t you home in the kitchen where you belong.” Other men shoved and tripped the marchers, while police did little to assist. One hundred marchers were taken to the hospital.

**President Woodrow Wilson**

(From *Handout E*) Paul went to the White House two weeks after the parade to talk to Wilson. The President promised to give the idea of voting rights for women his “most careful consideration,” but this promise did little to satisfy Paul and the suffragists.

(From *Handout F*) President Wilson resisted the efforts of Alice Paul, but eventually supported Carrie Chapman Catt. (Why?)

**Susan B. Anthony**

“Susan B. Anthony was born February 15, 1820 in Adams, Massachusetts. She was brought up in a Quaker family with long activist traditions. Early in her life she developed a sense of justice and moral zeal. After teaching for fifteen years, she became active in temperance. Because she was a woman, she was not allowed to speak at temperance rallies. This experience, and her acquaintance with Elizabeth Cady Stanton, led her to join the women’s rights movement in 1852. Soon after, she dedicated her life to woman suffrage. Ignoring opposition and abuse, Anthony traveled, lectured, and canvassed across the nation for the vote. She also campaigned for the abolition of slavery, the right for women to own their own property and retain their earnings, and she advocated for women’s labor organizations. In 1900, Anthony persuaded the University of Rochester to admit women.

Anthony, who never married, was aggressive and compassionate by nature. She had a keen mind and a great ability to inspire. She remained active until her death on March 13, 1906.”


See also Susan B. Anthony timeline [http://susananthonyhouse.org/timeline.php](http://susananthonyhouse.org/timeline.php)
Handout B: *Griswold v. Connecticut* (1965)—Case Background

The Comstock Laws, federal laws passed in 1873, banned the interstate distribution of “obscene, lewd, and/or lascivious” materials. With specific references to birth control devices and information, the regulation effectively outlawed birth control. Twenty four states passed similar laws.

In the early twentieth century, the “second wave” of the American feminist movement was largely behind efforts to repeal these laws. Individuals including Margaret Sanger campaigned for universal access to birth control. Sanger went on to found Planned Parenthood. Later in the twentieth century, challenges to laws banning birth control continued. One such law was a Connecticut statute, largely unchanged since adopted in 1879, that banned the use of “any drug, medicinal article or instrument for the purpose of preventing conception.” The law punished people who offered advice or counseling on birth control as severely as the offenders who actually used it.

In the 1960s, Estelle Griswold, the Executive Director of the Planned Parenthood League of Connecticut, together with a physician colleague from Yale School of Medicine, opened a birth control clinic for married couples in New Haven, Connecticut. The clinic was staffed with doctors and nurses, who provided counseling on birth control to married women only. Griswold was prosecuted, and the case eventually went to the Supreme Court. Griswold argued that marital privacy was a natural right protected by the Ninth Amendment, as well as by the Due Process Clause of the Fourteenth Amendment.
### Handout C: Document Summary Table

**Directions:** Use this form to develop an overview of the evidence available.

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<thead>
<tr>
<th>Document name &amp; date</th>
<th>Answers to questions on documents.</th>
<th>How each side might use the document to answer the central question (OR: What is the main idea of this document?)</th>
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Handout D: Documents on Privacy

James Otis, Against Writs of Assistance, 1761

Now one of the most essential branches of English liberty is the freedom of one’s house. A man’s home is his castle, and whilst he is quiet, he is as well guarded as a prince in his castle.

1. Restate Otis’s assertion in your own words.

2. What does this say about the status of the home in the American legal tradition?

Sections of the Bill of Rights, 1791

Amendment I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment III: No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V: No person ...shall be compelled in any criminal case to be a witness against himself...

Amendment IX: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

1. Underline the protections (if any) that may be based on a natural right to privacy.

2. In which amendment(s) do you find language similar to the language in Otis’ Against Writs of Assistance (above)?

Section of the Fourteenth Amendment, 1868

No state shall ... deprive any person of life, liberty, or property, without due process of law.

1. What is required in order for states to deprive people of their liberty?
Handout E: Related Statute and Court Cases

Connecticut Statute, 1879 (revised 1958)

Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned....

Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender.

1. What two kinds of crime does this statute define?

Pierce v. Society of Sisters (1925)

[T]he Act of 1922 [requiring all parents to send their children to public schools] unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state.

1. The Constitution does not list the right of parents to choose schools for their children. Why, then, does the Court refer to this right as “guaranteed by the Constitution”?

Palko v. Connecticut (1937)

[The scope of the Due Process Clause only includes rights which] have been found to be implicit in the concept of ordered liberty, and thus, through the Fourteenth Amendment, become valid as against the states ... [and which are] the very essence of a scheme of ordered liberty.

1. Restate this analysis of the Due Process Clause in your own words.

Dissenting Opinion, Poe v. Ullman (1943)

[T]he full scope of the liberty guaranteed by the Due Process Clause [of the Fourteenth Amendment] cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This “liberty” is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints....

1. How does this document define liberty?
Handout F: The Issue in Images

Margaret Sanger Has Her Mouth Covered, 1929

1. What right does this birth control activist claim the government is abridging?

Man Pickets Outside New Haven Planned Parenthood, 1963

2. What is this protestor’s message?

Birth Control Advertising, 1967

3. Did the creators of this poster believe that the right to use birth control is a right protected by the Ninth Amendment?

Photo by H. William Tetlow/Fox Photos/Getty Images
[S]pecific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one. The Third Amendment in its prohibition against the quartering of soldiers “in any house” in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” The Fifth Amendment in its Self-Incrimation Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

The Fourth and Fifth Amendments were described ... as protection against all governmental invasions “of the sanctity of a man's home and the privacies of life.”

We have had many controversies over these penumbral rights of “privacy and repose.” These cases bear witness that the right of privacy which presses for recognition here is a legitimate one.

The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a “governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.”

Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship. We deal with a right of privacy older than the Bill of Rights - older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred...

Critical Thinking Questions

1. How does the Court's decision compare to your analysis of Sections of the Bill of Rights (Handout D)?

2. What does the Court mean by a “zone of privacy”?  

3. What does the Court mean by “we deal with a privacy older than the Bill of Rights”?  

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Handout H: *Griswold v. Connecticut* (1965) — Concurring and Dissenting Opinions

**Concurring Opinion**

Since 1791 [the Ninth Amendment] has been a basic part of the Constitution which we are sworn to uphold. To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments to the Constitution is to ignore the Ninth Amendment and to give it no effect whatsoever.

1. Why is the Ninth Amendment so significant?

**Dissenting Opinion**

Since 1879 Connecticut has had on its books a law which forbids the use of contraceptives by anyone. I think this is an uncommonly silly law. As a practical matter, the law is obviously unenforceable, except in the oblique context of the present case. As a philosophical matter, I believe the use of contraceptives in the relationship of marriage should be left to personal and private choice, based upon each individual’s moral, ethical, and religious beliefs. As a matter of social policy, I think professional counsel about methods of birth control should be available to all, so that each individual’s choice can be meaningfully made. But we are not asked in this case to say whether we think this law is unwise, or even asinine. We are asked to hold that it violates the United States Constitution. And that I cannot do.

1. Restate the main points of the dissenters’ argument.
Handout B: Case Backgrounds

*Regents of the University of California v. Bakke (1978)*

The phrase “affirmative action” first appeared in a 1961 executive order by President John F. Kennedy, barring federal contractors from discriminating on the basis of race, creed, color, or national origin. President Lyndon B. Johnson echoed this phrasing in his own policies and speeches. Congress later passed the Civil Rights Act of 1964, barring discrimination by any institutions receiving federal money.

The University of California at Davis Medical School, a public school, was founded in 1966. The first class of fifty students was made up of forty-seven white students and three of Asian descent. In order to achieve a more racially diverse student body, in 1970 the University took what it described as affirmative action by creating two separate admissions programs. The general program required a 2.5 GPA, an interview, letters of recommendation, and test scores. The special program, for which only disadvantaged members of minority groups were eligible, had no GPA cutoff. By 1973, the class size had doubled to 100, and of those 100 spaces, sixteen were reserved for minority applicants in the special program. Applicants to the special program competed only against each other for admission, and did not compete against applicants to the general admissions program.

Allan Bakke, a Caucasian, applied twice to the medical school, and was rejected both times. His GPA and test scores, however, were higher than those of any of the students accepted into the special program. He sued the school, charging that the special admissions program amounted to a quota system that discriminated against whites.


In *Regents of the University of California v. Bakke* (1978), the Supreme Court handed down a fractured ruling on affirmative action in public universities. The plurality decision found UC-Davis’s special admissions program to be a quota that was not consistent with the Equal Protection Clause of the Fourteenth Amendment. Twenty-five years later, two affirmative action cases originating at the University of Michigan reached the Court. Both cases concerned Caucasian applicants who believed they had been unfairly denied admission because of the university’s admissions policies. In *Grutter v. Bollinger* (2003), the Court examined the university’s Law School program, which sought to admit a “critical mass” of minority students. The second case, *Gratz v. Bollinger*, concerned the admissions policy of the University’s Literature, Science and Arts School (LSA). This admissions program automatically awarded 20 points out of the 100 necessary for acceptance to members of minority groups. The legal reasoning for affirmative action in the two Michigan cases was partially different from the reasoning in *Bakke*. Affirmative action began as a way of compensating groups for unjust discrimination they had suffered. By 2003, the University of Michigan based its reasoning on promoting diversity.

In *Grutter v. Bollinger* and *Gratz v. Bollinger*, the Court had a chance to clarify its ruling in Bakke and determine the extent to which public universities could constitutionally consider race as a factor in admissions.
Handout C: *Regents of the University of California v. Bakke* (1978) — Opinions

**Justice Thurgood Marshall’s Memo, 1978**

*Note: This memo was circulated while the Justices were considering the case.*

The decision in this case depends on whether you consider the action of [UCD Medical School] as admitting certain students or excluding certain other students.

1. What two approaches to the Bakke case does Justice Marshall identify?

*Regents of the University of California v. Bakke* (1978)—Plurality Decision (5-4)

The guarantees of the Fourteenth Amendment extend to all persons. Its language is explicit. …The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal… Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake…

Hence, the purpose of helping certain groups whom the faculty of the Davis Medical School perceived as victims of “societal discrimination” does not justify a classification that imposes disadvantages upon persons like [Bakke], who bear no responsibility for whatever harm the beneficiaries of the special admissions program are thought to have suffered…

[A] diverse student body … clearly is a constitutionally permissible goal for an institution of higher education. …Ethnic diversity, however, is only one element in a range of factors a university properly may consider in attaining the goal of a heterogeneous student body…

In summary, it is evident that the Davis special admissions program involves the use of an explicit racial classification never before countenanced by this Court. It tells applicants who are not Negro, Asian, or Chicano that they are totally excluded from a specific percentage of the seats in an entering class. No matter how strong their qualifications, quantitative and extracurricular, including their own potential for contribution to educational diversity, they are never afforded the chance to compete with applicants from the preferred groups for the special admissions seats.

In enjoining petitioner [UC-Davis] from ever considering the race of any applicant, however, the courts below failed to recognize that the State has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin. For this reason, so much of the California court’s judgment as enjoins petitioner from any consideration of the race of any applicant must be reversed.

1. Of the two approaches identified by Marshall (above), which does the Court appear to have adopted?
2. How does the Court define terms such as “equal” and “protection” in this ruling?

Regents of the University of California v. Bakke (1978)—Justice Thurgood Marshall’s Separate Opinion

I agree with the judgment of the Court only insofar as it permits a university to consider the race of an applicant in making admissions decisions. I do not agree that petitioner’s admissions program violates the Constitution. For it must be remembered that, during most of the past 200 years, the Constitution, as interpreted by this Court, did not prohibit the most ingenious and pervasive forms of discrimination against the Negro. Now, when a State acts to remedy the effects of that legacy of discrimination, I cannot believe that this same Constitution stands as a barrier...

The position of the Negro today in America is the tragic but inevitable consequence of centuries of unequal treatment. Measured by any benchmark of comfort or achievement, meaningful equality remains a distant dream for the Negro... It is because of a legacy of unequal treatment that we now must permit the institutions of this society to give consideration to race in making decisions about who will hold the positions of influence, affluence, and prestige in America. For far too long, the doors to those positions have been shut to Negroes. If we are ever to become a fully integrated society, one in which the color of a person’s skin will not determine the opportunities available to him or her, we must be willing to take steps to open those doors...

1. In what way does Marshall agree with the majority decision? How does he depart from it?
Grutter v. Bollinger, 2003–Majority Opinion (5-4)

[The Law School seeks to “enroll a critical mass of minority students.” The Law School’s interest is not simply “to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin.” That would amount to outright racial balancing, which is patently unconstitutional...

The current Dean of the Law School ... did not quantify “critical mass” in terms of numbers or percentages. He indicated that critical mass means numbers such that underrepresented minority students do not feel isolated or like spokespersons for their race...The Law School’s concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce...

We find that the Law School’s admissions program bears the hallmarks of a narrowly tailored plan...[T]ruly individualized consideration demands that race be used in a flexible, non-mechanical way. It follows from this mandate that universities cannot establish quotas for members of certain racial groups...Universities can, however, consider race or ethnicity more flexibly as a “plus” factor in the context of individualized consideration of each and every applicant...

When using race as a “plus” factor in university admissions, a university’s admissions program must remain flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes an applicant’s race or ethnicity the defining feature of his or her application...

Here, the Law School engages in a highly individualized, holistic review of each applicant’s file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment... There is no policy...of automatic acceptance or rejection based on any single “soft” variable. Unlike the program at issue in Gratz v. Bollinger, the Law School awards no mechanical, predetermined diversity “bonuses” based on race or ethnicity...

It has been 25 years since [the ruling in Bakke] first approved the use of race to further an interest in student body diversity in the context of public higher education... We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

1. Why did the Court uphold the Law School’s admissions program?


The Law School has offered no explanation for its actual admissions practices and, unexplained, we are bound to conclude that the Law School has managed its admissions program, not to achieve a “critical mass,” but to extend offers of admission to members of selected minority groups in proportion to their statistical representation in the applicant pool. But this is precisely the type of racial balancing that the Court itself calls “patently unconstitutional.”
Handout D: Page 2

Note: The following charts are taken from Rehnquist’s opinion.

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<th>Year</th>
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<th>% of admitted applicants who were African American</th>
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<th>Year</th>
<th>% of Hispanic applicants</th>
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<td>5.1%</td>
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1. What arguments does Rehnquist make about the Law School’s “actual admissions practices”?

2. Is his argument supported by this data?

Grutter v. Bollinger—Opinion of Antonin Scalia

The University of Michigan Law School’s mystical “critical mass” justification for its discrimination by race challenges even the most gullible mind. The admissions statistics show it to be a sham to cover a scheme of racially proportionate admissions.

1. Scalia concurred with the majority in part and dissented in part. Is this document an example of his concurrence [agreement] with the decision, or with his dissent?

Grutter v. Bollinger—Opinion of Clarence Thomas

Frederick Douglass, speaking to a group of abolitionists almost 140 years ago, delivered a message lost on today’s majority...Like Douglass, I believe blacks can achieve in every avenue of American life without the meddling of university administrators.

The Law School, of its own choosing, and for its own purposes, maintains an exclusionary admissions system that it knows produces racially disproportionate results. Racial discrimination is not a permissible solution to the self-inflicted wounds of this elitist admissions policy...

I agree with the Court’s holding that racial discrimination in higher education admissions will be illegal in 25 years...I respectfully dissent from the remainder of the Court’s opinion and the judgment, however, because I believe that the Law School’s current use of race violates the Equal Protection Clause and that the Constitution means the same thing today as it will in 300 months.

1. Why does Thomas reference Frederick Douglass’s address?

2. What is Thomas’s view of the Court’s prediction that racial discrimination in higher education admissions will be illegal in 25 years?
Gratz v. Bollinger—Majority Opinion (6-3)

The [Literature, Science and Art School] LSA considers a number of factors in making admissions decisions, including high school grades, standardized test scores, high school quality, curriculum strength, geography, alumni relationships, leadership, and race. During [the period of this case], the University has considered African-Americans, Hispanics, and Native Americans to be “underrepresented minorities,” and it is undisputed that the University admits virtually every qualified applicant from these groups. The current guidelines use a selection method under which every applicant from an underrepresented racial or ethnic minority group is automatically awarded twenty points of the 100 needed to guarantee admission.

We find that the University’s policy, which automatically distributes 20 points, or one-fifth of the points needed to guarantee admission, to every single “underrepresented minority” applicant solely because of race, is not narrowly tailored to achieve the interest in educational diversity that respondents claim justifies their program.

Even if [a Caucasian student’s] “extraordinary artistic talent” rivaled that of Monet or Picasso, the applicant would receive, at most, five points under the LSA’s system. At the same time, every single underrepresented minority applicant ... would automatically receive 20 points for submitting an application. Clearly, the LSA’s system does not offer applicants the individualized selection process...

We conclude, therefore, that because the University’s use of race in its current freshman admissions policy is not narrowly tailored to achieve respondents’ asserted compelling interest in diversity, the admissions policy violates the Equal Protection Clause of the Fourteenth Amendment.

1. Why did the Court strike down the LSA’s admissions program?

2. How did the Literature, Science and Arts School admissions policy differ from the Law School policy (see Handout D)?

Gratz v. Bollinger—Dissenting Opinion (David Souter)

The very nature of a college’s permissible practice of awarding value to racial diversity means that race must be considered in a way that increases some applicants’ chances for admission. [I]t is hard to see what is inappropriate in assigning some stated value to a relevant characteristic, whether it be reasoning ability, writing style, running speed, or minority race...

It suffices for me ... that there are no ... set-asides and that consideration of an applicant’s whole spectrum of ability is no more ruled out by giving 20 points for race than by giving the same points for athletic ability or socioeconomic disadvantage.
1. Why would Souter have upheld the Literature, Science and Arts School’s admissions policy?

*Gratz v. Bollinger–Dissenting Opinion (Ruth Bader Ginsburg)*

If honesty is the best policy, surely Michigan’s accurately described, fully disclosed College affirmative action program is preferable to achieving similar numbers through winks, nods, and disguises.

1. How does Ginsburg compare the program in Gratz (“fully disclosed”) to the program in Grutter (“winks, nods, and disguises”)?
Handout F: Documents Summary Table

**Directions:** Use this form (and additional copies as needed) to develop an overview of the Court opinions.

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<th>Answers to scaffolding questions</th>
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Directions: Use the spaces below to show what legitimate powers of government you think should belong to each level of government. Discuss with a partner your reasons for putting specific powers at each level. Use the lines at the bottom of the page to summarize the reasoning you and your partner discussed. Be sure to explain any disagreement you and your partner may have addressed.
Handout B: Article 1 Sections 8, 9, 10 of the Constitution and the Tenth Amendment

Directions: Work with your group to complete the following.

1. Write your own title for each section or amendment.

2. Compare the ways you divided power between state and federal levels with the system the Founders provided in the Constitution.

3. What reasoning can you see behind the way the Founders divided power? Why were certain powers given to the federal government, but not others? Why were the powers not delegated to the federal government reserved to the states and the people?

4. Identify and underline ways in which the people's rights are protected by limits on the powers of Congress. Be prepared to explain the significance of each point that you identify.

Article I, Section 8

Your title:________________________________________

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
To provide and maintain a navy;
To make rules for the government and regulation of the land and naval forces;
To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions.
To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And
To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Article I, Section 9

The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.
The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.
No bill of attainder or ex post facto Law shall be passed.
No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.
No tax or duty shall be laid on articles exported from any state.
No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.
No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.
No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Article I, Section 10

No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of
contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

**Tenth amendment**

Your title: ____________________________

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.
One major criticism of strong state power comes from the legacy of slavery. After the Civil War and Reconstruction enslaved people had been freed, but they were not equal under the law. A majority of states enacted Jim Crow laws (named after a black character in popular variety shows of the time). These laws outlawed interracial marriage, and they legalized segregation and unequal treatment based on race. By 1914, every Southern state and many Northern ones had passed laws that preserved two separate societies: one for whites, and one for blacks and “non-whites.” Blacks could not use white facilities like restrooms, restaurants, or parks, or even be buried in the same cemeteries as whites. In the case of Plessy v. Ferguson (1896), the Supreme Court upheld separate but equal accommodations. By September 1949, only fifteen U.S. states had no segregation laws.

The National Association for the Advancement of Colored People (NAACP) launched a strategy of challenging these laws in court. The cases eventually made their way to the Supreme Court. The first major legal blow to Jim Crow laws came with the landmark 1954 decision of Brown v. Board of Education. In this case, the Supreme Court found that segregation violated the Equal Protection Clause of the Fourteenth Amendment. This eventually meant that the states would have to follow the directions of the federal government and integrate their schools. The 1954 Brown case marked the beginning of the Civil Rights Movement toward equal treatment in public life and the end of the states’ use of federalism to make Jim Crow laws. Later federal legislation, intended to overcome the use of federalism to violate civil rights by states, included the Civil Rights Act (1964) and the Voting Rights Act (1965). These laws and the enforcement of them came almost a century after the passage of the Fourteenth Amendment.

Responses to Jim Crow

In response to Jim Crow laws, many argued for increased federal power. They pointed to the legal inequality and violation of natural rights caused by such laws and that a strong federal government could correct such wrongs. They made the case that states often commit wrongful acts and that the federal government is an important force to correct these wrongs.

Others disagreed, pointing out that national governments have no better record of protecting rights than states do. The federal government did not effectively protect citizens’ rights during centuries of slavery and segregation. If more power were given to the federal government in the name of protecting rights, what would happen if officials then used that greater power to do bad things that affected the whole nation?
Critical Thinking Questions

1. How does the legacy of slavery relate to the principle of federalism?

2. What are some arguments for and against increased federal power in response to state violations of rights?

3. Which arguments are most persuasive?
Handout D: Excerpts from Roger Sherman, June 6, 1787
(From Madison’s Notes on the Philadelphia Convention)

Mr. SHERMAN. If it were in view to abolish the State Governments the elections ought to be by the people. If the State Governments are to be continued, it is necessary in order to preserve harmony between the National & State Governments that the elections to the former [National] should be made by the latter [State]. The right of participating in the National Govt. would be sufficiently secured to the people by their election of the State Legislatures. The objects of the Union, he [Sherman] thought were few. 1. defense against foreign danger. 2. defense against internal disputes & a resort to force. 3. treaties with foreign nations. 4. regulating foreign commerce, & drawing revenue from it. These & perhaps a few lesser objects alone rendered a Confederation of the States necessary. All other matters civil & criminal would be much better in the hands of the States. The people are more happy in small than in large States. States may indeed be too small as Rhode Island, & thereby be too subject to faction. Some others were perhaps too large, the powers of Govt. not being able to pervade them. He [Sherman] was for giving the General Govt. power to legislate and execute within a defined province.

Scaffolding Questions

1. According to Roger Sherman of Connecticut, what were the proper tasks of the national government?

2. For each of the following statements by Sherman, state whether you agree or disagree and explain why.

   a. “All other matters civil & criminal would be much better in the hands of the States.”

   b. “The people are more happy in small than in large States.”

   c. “States may indeed be too small as Rhode Island, & thereby be too subject to faction.”

   d. “Some others were perhaps too large, the powers of Govt. not being able to pervade them.”
(Italics are original.)

...If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honorable title of republic. It is sufficient for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character...

[If the government be national with regard to the operation of its powers, it changes its aspect again when we contemplate it in relation to the extent of its powers. The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme; and may be controlled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority, than the general authority is subject to them, within its own sphere. In this relation, then, the proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated...
Handout E: Page 2

Scaffolding Questions

1. How did Madison define a republic?

2. How did Madison explain that the government established by the 1787 Constitution was not what he called a “national” government in the extent of its powers? (Hint: Where Madison used the term “national,” think “We the People.” Where he used the term “federal,” think “We the States.”)

3. In describing the court system that would be necessary to settle any disputes that may arise regarding the proper boundary between the national and state governments, what important points did Madison make?
   a. Was the court established as part of the national (general) government or state government?
   b. How should decisions be made in this court?
   c. Why was such a court essential?
Handout F: Excerpts from *Democracy in America*, Advantages of the Federal System, Alexis de Tocqueville (1835)

...The federal system, therefore, rests upon a theory which is complicated at the best, and which demands the daily exercise of a considerable share of discretion on the part of those it governs...In examining the Constitution of the United States, which is the most perfect constitution that ever existed, one is startled at the variety of information and the amount of discernment that it presupposes in the people whom it is meant to govern. The government of the Union depends almost entirely upon legal fictions; the Union is an ideal nation, which exists, so to speak, only in the mind, and whose limits and extent can only be discerned by the understanding... [However,] I scarcely ever met with a plain American citizen who could not distinguish with surprising facility the obligations created by the laws of Congress from those created by the laws of his own state and who after having discriminated between the matters which come under the cognizance of the Union and those which the local legislature is competent to regulate, could not point out the exact limit of the separate jurisdictions of the Federal courts and the tribunals of the state...

[An important defect in the American system of federalism] is the relative weakness of the government of the Union...The Union is possessed of money and troops, but the states have kept the affections and the prejudices of the people. The sovereignty of the Union is an abstract being, which is connected with but few external objects; the sovereignty of the states is perceptible by the senses, easily understood and constantly active. The former is of recent creation, the latter is coeval [having the same date of origin] with the people itself. The sovereignty of the Union is factious, that of the states is natural and self-existent, without effort, like the authority of a parent. The sovereignty of the nation affects a few of the chief interests of society; it represents an immense but remote country, a vague and ill-defined sentiment. The authority of the states controls every individual citizen at every hour and in all circumstances; it protect his property, his freedom and his life; it affects at every moment his well-being or his misery. When we recollect the traditions, the customs, and prejudices of local and familiar attachment with which it is connected, we cannot doubt the superiority of a power that rests on the instinct of patriotism, so natural to the human heart...The result of their [the Constitution’s Framers] efforts has been to make the federal government more independent in its sphere than are the states in theirs. But the federal government is hardly concerned with anything except foreign affairs; it is the state governments which really control American society.
Scaffolding Questions

1. List some of Tocqueville’s descriptive terms referring to the U.S. Constitution:

2. List some of Tocqueville’s descriptive terms referring to the U.S. population. To what extent do you believe these descriptions are accurate regarding citizens today?

3. According to Tocqueville, which level of government had a greater impact on the lives of citizens? Which level was more likely to receive citizens’ affections and loyalty? Which level “really controlled American society”? To what extent do you agree that Tocqueville’s observations are still accurate today? If his observations are not still accurate, why not?

4. What virtues did Tocqueville assume to be necessary and present in the U.S. population?
Handout G: An Overview of Federalism at the Founding and Early Republic

Directions: Use Handout D: Excerpts, Roger Sherman, June 6, 1787, Handout E: Excerpts, Federalist No. 39, James Madison, 1788, and Handout F: Excerpts, Democracy in America, Alexis de Tocqueville, (1835) to fill in this table in order to understand how thinkers in the 18th and 19th centuries expected the principle of federalism to be applied.

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<th>Main Ideas</th>
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<th>Alexis de Tocqueville</th>
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To what extent and in what ways have the powers and functions of the two levels of government changed in the 20th and 21st centuries?
When the Founders drafted a new Constitution in Philadelphia in 1787, they set out to address the economic problems of the 1780s by creating a national government that would have the authority to impose taxes, regulate foreign trade and, most importantly, create a common commercial policy among the various state governments. In the Federalist Papers, James Madison and Alexander Hamilton argued forcefully that the federal government needed these expanded powers in order to create a large free trading area within the continental United States and to regulate conflicting state economic interests for the common good. They also argued for a strong commercial policy to open up markets for foreign trade.

The reach of the Commerce Clause, found in Article I, Section 8 of the Constitution, is an important focus of debate about federal power. It states, “Congress shall have the power…to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes.” The first Supreme Court case on this part of the Constitution was Gibbons v. Ogden in 1824. The Court held that the Commerce Clause granted Congress “the power to regulate; that is, to prescribe the rule by which commerce is to be governed.” That power extended to interstate commerce: “Comprehensive as the word ‘among’ is, it may very properly be restricted to that commerce which concerns more States than one.”

One of the first twentieth century cases to deal with the Commerce Clause was Hammer v. Dagenhart (1918). The Court ruled that the federal government could not outlaw child labor in manufacturing activities where the process took place in one state and did not cross state lines. The Justices might have agreed that it was a worthy goal to protect young children from long work hours. However, the Court did not agree that the federal government had the power to legislate on this issue. The Court found that the Tenth Amendment left this power to the states and that Congress could not make rules related to the production of goods where interstate commerce was not involved.

The New Deal

Midway through the twentieth century, Congress started using the Commerce Clause as the grounds for the enactment of many new types of laws to regulate not merely commerce, but the conditions of economic and social life. The Commerce Clause has been a significant basis for the expansion of federal power. The Supreme Court changed its way of thinking in the 1930s under great political stress. President Franklin Delano Roosevelt proposed, and Congress passed, many new programs called the “New Deal.” One program was Social Security, which gave pensions and aid to the disabled and elderly through taxes paid by younger citizens. Other programs regulated the
stock market. At first, the Supreme Court ruled in several cases that Congress had no authority to enact such laws. In 1937, President Roosevelt spoke out against the Supreme Court for its actions on the New Deal legislation. He wanted to be able to add one new justice for every current justice over the age of 70. Most experts now view his idea as a political plan to help his legislation. Some of the political conflict eased when one justice began voting to support the New Deal. Another justice retired and was replaced by a supporter of the New Deal programs.

The new majority found the increased federal power of New Deal legislation constitutional. The Supreme Court was going in a new direction. Congress was now able to create laws regulating, banning, and supporting a wide range of activities, and it did. Laws would be upheld as long as the Court was convinced that the regulated activities had a close and substantial relation to interstate commerce. Federal power expanded dramatically for over fifty years.

*Lopez, Morrison, and Raich*

After 59 years of upholding legislation, in 1995 the Court ruled that Congress had gone too far under the Commerce Clause. In *United States v. Lopez* (1995), the Court struck down a federal law that created gun-free school zones. Congress had argued that because schools prepared people for the business world, there was a connection between schools and interstate commerce. Therefore, Congress argued, it could regulate guns in school. However, the Court ruled that the law dealt only with possession of arms and not interstate commerce. The Court appeared to be continuing in this direction when it overturned parts of the Violence Against Women Act in the 2000 case of *U.S. v. Morrison*. The Court held that the Commerce Clause did not give Congress the power to allow rape victims to sue their attackers in federal court for money damages. In *Gonzalez v. Raich* (2005), however, the Court did not continue this trend. It ruled Congress could ban marijuana throughout the nation even when an individual state had laws allowing individuals to grow their own marijuana for medicinal purposes. The Court reasoned that the policy within that single state would affect supply and demand, and therefore Congress's ban was sufficiently related to interstate commerce.

**The Affordable Care Act**

In *NFIB v. Sebelius* (2012), the Supreme Court upheld most of the 2010 Affordable Care Act (ACA). The case involved a lawsuit by 26 state governments and multiple private plaintiffs, including the National Federation of Independent Business—the nation's largest small business organization. They challenged the constitutionality of two key parts of the ACA: the individual health insurance mandate, which requires most Americans to purchase government-approved health insurance, and a provision forcing state governments to greatly expand the Medicaid health care program for the poor, or risk losing all their existing Medicaid funds.

The federal government claimed that the individual mandate was authorized by the Commerce Clause, the Necessary and Proper Clause, and the Tax Clause – which gives Congress the power to impose taxes. In a 5-4 decision, the Supreme Court rejected the first two arguments, but upheld the mandate on the third. In other words, the Court ruled that the Commerce Clause did not give Congress the taxing power. Though the text of the ACA refers to
a “penalty” and not a “tax,” Chief Justice Roberts reasoned that it was not a real penalty because it was “not a legal command to buy insurance.” It was merely a requirement that violators pay a fine. He also argued that the Court had a duty to construe the law as a tax, if such an interpretation were at all plausible, so as to give Congress the benefit of the doubt and avoid ruling that one of its laws was unconstitutional.

Comprehension Questions

1. What was the purpose of the Commerce Clause?
2. Why is *Gibbons v. Ogden* (1824) an important federalism case?
3. Describe the shift that began around the time of the New Deal in the Supreme Court’s interpretation of the Commerce Clause.
4. Do you think the Founders thought the Commerce Clause would be used to expand the power of the federal government? Why or why not?
5. What trade-offs are involved in giving the federal government increased power over states and individuals?
Handout I: Commerce Clause Timeline

Directions:

1. Use the Background Essay from Handout H: How Has the Supreme Court Interpreted the Commerce Clause? and other sources as needed to evaluate the laws and Supreme Court decisions listed below. In the graph, place a dot and the corresponding number for each of the events listed. Then draw a line to connect the dots, indicating the historical trend with respect to the power of the national government based on the Commerce Clause events.

2. On the lines at the bottom of the page, respond to these questions: How do you think Tocqueville would evaluate these changes in the scope of federal power? To what extent do you think the growth of the national government’s power is a positive development? Be sure to frame your response by referring to constitutional principles such as representative government, consent of the governed, separation of powers, federalism, individual rights, and limited government.

Handout A: Constitutional Connection—The Electoral College

Directions: Read the following document excerpts and answer the questions that follow.

Article II, Section 1 (1787)

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress...

The electors shall meet in their respective states, and vote by ballot for two persons...

Excerpts from Federalist No. 68 (1788) by Alexander Hamilton

[T]he sense of the people should operate in the choice of the person to whom so important a trust [the President] was to be confided...

A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.

And as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which might be communicated from them to the people, than if they were all to be convened at one time, in one place...

Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States.

Questions:

1. How are electors selected?
2. Where do the electors meet?
3. What are three reasons Hamilton gives in Federalist No. 68 for using this method for selecting the President?
4. Do any/all of these reasons still apply today?
Handout B: Background Essay: Voting Rights Amendments

When the United States was founded, states and localities determined who was eligible to vote. Nearly everywhere, only adult males who owned property could cast ballots. The history of the amendments to the Constitution is, in one sense, a history of the expansion of certain political rights, including voting.

The Founders saw governments as existing to protect natural (or “inalienable”) rights. Natural rights are rights people are born with, and which can be exercised without anyone else taking any action. Examples are freedom of speech and freedom of religious belief. Political rights, such as voting, require positive action on the part of others – if you have a right to vote, then someone else must have the obligation to set up a polling place, count the votes, and do other things to secure that ability.

Many believe they have a constitutional right to vote in our democratic republic, but there is actually no such right listed in the Constitution. Rather, several amendments to the Constitution list conditions that the states cannot use to stop people from voting.

The Constitution may one day be amended to guarantee the right to vote, but the current document only says what the government cannot do to “deny or abridge” your rights.

Former Male Slaves/African American Men: The Fifteenth Amendment

Many of the individuals who fought against the institution of slavery were among those who supported voting rights for former slaves. Frederick Douglass, an influential writer and lecturer who was also a former slave, believed that full equality could not come without the right to vote. He asked President Lincoln to fight for abolition, and he worked to recruit blacks to fight for the Union during the Civil War.

The Fourteenth Amendment was ratified after the war, and provided that no state could deny equal protection of the law to its citizens. But many former slaves were still turned away when they tried to vote. The Fifteenth Amendment was written to clearly ban the denial of voting rights to former slaves. Ratified in 1870, it barred states from stopping people from voting on the basis of “race, color, or previous condition of servitude.”

Though former slaves could not constitutionally be barred from voting, many blacks who attempted to register to vote often faced harassment and violence. Fannie Lou Hamer, an African American woman from Mississippi, worked on voter registration drives in the mid-twentieth century. Guards at Montgomery County Jail beat her and fellow civil rights workers when she tried to register to vote in 1963. She spoke out at the Democratic presidential convention about people being illegally prevented from voting. A year later in 1965, President Johnson signed the Voting Rights Act into law, which many see as a fulfillment of the Fifteenth Amendment’s promise.
Women and the Seneca Falls Convention: The Nineteenth Amendment

The first American women’s rights convention was held in 1848 in Seneca Fall, New York. It was organized by Elizabeth Cady Stanton, Lucretia Mott, and others. Frederick Douglass and Sojourner Truth were among the 300 people in attendance.

The delegates signed the Declaration of Sentiments and Resolutions, which used the same wording as the Declaration of Independence, to list the ways women had been deprived of equal rights, including “the inalienable right to the elective franchise.” The Declaration of Sentiments and Resolutions was signed by 100 people, including thirty-two men.

Women suffragists continued to campaign for the vote and other rights for the next eighty years. During that time, many states approved votes for women at the state level. After the Nineteenth Amendment was ratified in 1920, states could not stop people from voting because they were female.

Native Americans

No constitutional amendment secures the right to vote for Native Americans. Through American history, many states imposed severe restrictions on the ability of Native Americans to vote. Many states passed laws that excluded those Native Americans living in traditional American Indian culture, requiring that voters prove that they were “civilized.”

In other cases, laws that appeared fair on their face—requiring voters to be citizens, for example—had the intended result of stopping Native Americans from voting, as they were not granted citizenship rights until 1924 when Congress passed the Indian Citizenship Act. After this law was passed, many states imposed other restrictions meant to keep Native Americans from voting. The last state to grant voting rights to Native Americans did so in 1947.

The 1965 Voting Rights Act was amended in 1975 and 1982 to include federal protections for Native Americans.

Washington, D.C., Poll Taxes, and Eighteen to Twenty-One Year Olds

When the District of Columbia was established, it was planned to serve merely as a seat of government. By the twentieth century, however, its population was greater than those of several states. The Twenty-Third Amendment gave the right to vote in national elections to residents of Washington, D.C. It did not, however, make the District of Columbia into a state.

The Twenty-Fourth Amendment prohibited states from stopping people who could not pay a poll tax from voting. Poll taxes had historically been used to keep poor African Americans from voting.

Finally, the Twenty-Sixth Amendment lowered the voting age from twenty-one to eighteen years of age. This amendment came during the Vietnam War in response to the objection that eighteen-year-old men were being drafted into the military, yet had no right to vote.
Handout C: The Suffrage Amendments

Directions: Read the following amendments to the Constitution and paraphrase each.

Amendment XV (1870)
Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Amendment XIX (1920)
Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Amendment XXIII (1961)
Section 1. The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Amendment XXIV (1964)
Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

Amendment XXVI (1971)
Section 1. The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.
Handout D: Alice Paul

“I resorted to the hunger strike method twice... When the forcible feeding was ordered, I was taken from my bed, carried to another room and forced into a chair, bound with sheets and sat upon bodily by a fat murderer, whose duty it was to keep me still. Then the prison doctor... placed a rubber tube up my nostrils and pumped liquid food through it into the stomach. Twice a day for a month... this was done.”

This is how Alice Paul, a women’s suffragist, described her experience in a British prison.

Alice Paul was born in 1885 on a New Jersey farm. Her parents encouraged her love of learning, and her mother often brought her along to women’s suffrage meetings. Paul attended prestigious universities and earned a master’s degree in sociology. In 1907, Paul moved to England where she continued her studies in economics and political science.

While in England, Paul joined a group working to win voting rights for women in Britain. She was arrested three times while attending demonstrations. In prison, Paul and her fellow activists began hunger strikes to bring attention to their imprisonment. British authorities force-fed the women by putting tubes down their through their nostrils. They would often vomit through the violent process.

When Paul came back to the U.S. in 1910, she turned her attention to the fight for women’s suffrage in America. She wrote her Ph.D. dissertation on the legal position of women in Pennsylvania. She joined the National American Woman Suffrage Association (NAWSA) and chaired the committee working for a federal amendment, but by that time the NAWSA had all but given up on a federal amendment and was instead focusing efforts on the state level.

Paul saw Woodrow Wilson’s upcoming presidential inauguration as an opportunity to bring national attention to the cause of voting rights for women. She organized a parade to coincide with the inaugural parade. The parade was a historic spectacle with more than twenty floats and over 5,000 marchers.

The parade was not without its challenges. Paul recalled years later: “We did hear a lot of shouted insults... the usual things about why aren’t you home in the kitchen where you belong.” Other men shoved and tripped the marchers, while police did little to assist. One hundred marchers were taken to the hospital.

Paul went to the White House two weeks after the parade to talk to Wilson. The President promised to give the idea of voting rights for women his “most careful consideration,” but this promise did little to satisfy Paul and the suffragists.

Paul soon grew frustrated by NAWSA, finding the group’s efforts to be disorganized and inadequate, and in 1913 founded her own suffrage organization. It would be called the National Woman’s Party. Noting that she did not look at all like a political agitator, the Chicago Tribune described her as a “delicate slip of a girl.” But “Miss Paul,” as she preferred to be called, was in fact an agitator of the most effective kind.

Paul began to organize demonstrations and parades in support of women’s suffrage. She wrote and distributed leaflets, and she organized daily pickets in front of the White House. The
picket signs addressed Wilson directly and used his own words to make their case, “Mr. President, you say liberty is the fundamental demand of the human spirit,” and “Mr. President, how long must women wait for liberty?” Demonstrators burned Wilson’s copies of his speeches, calling them “meaningless words” on democracy. They even burned an effigy of Wilson at the White House gates.

Unlike NAWSA, Paul’s party did not suspend their efforts during World War I. They believed World War I made women’s suffrage even more vital. The war was being fought “so that democracies may be safe,” as Wilson said, but the suffragists claimed the United States was itself not a democracy, as twenty million women were without the means for self-government.

Growing frustrated, police announced that picketers would be given six months in prison. The next day, October 17, 1917, Paul defiantly led a march to the White House. The marchers, including Paul, were sentenced to six months in jail.

During her sentence in Virginia, Paul was placed in solitary confinement. Her diet of bread and water weakened her so much that she was taken to the prison hospital. But instead of eating more, Paul decided to use the strategy she’d learned in England eight years before: a hunger strike. Just as the British had done, prison officials force-fed Paul to prevent her from dying and becoming a martyr for the cause. Paul wrote to a friend of her experience during the forced feeding, describing the constant “cries and shrieks and moans.” She would later explain that the form of non-violent protest was “the strongest weapon left with which to continue... our battle.”

Paul’s actions alienated some who believed the women’s suffragists were becoming too militant. On the other hand, Paul and the 500 others who were arrested for speaking, publishing, peaceably assembling, and petitioning became known as political prisoners, which mobilized their cause. Wilson eventually acknowledged public opinion and ordered the suffragists released from prison.

Paul’s efforts, coupled with NAWSA’s newly focused and effective strategy of lobbying on the local, state, and federal levels, had led the suffragists to victory. Wilson lent his support to the Women’s Suffrage Amendment in January of 1918. Congress approved it within a year and it was ratified by the states in 1920.

**Critical Thinking Questions**

1. Why was Alice Paul arrested in London?
2. Why do you think she decided to go on a hunger strike?
3. How did Paul’s National Woman’s Party work for women’s suffrage?
4. Paul’s militant actions alienated some people. Why do you think Paul chose to continue them?
5. If you were writing a eulogy for Alice Paul, what would you say? How should Paul’s efforts on behalf of women’s suffrage be remembered?
Since the rise of modern “big business” in the Industrial Age, Americans have expressed concerns about the influence of corporations and other “special interests” in our political system. In 1910 President Theodore Roosevelt called for laws to “prohibit the use of corporate funds directly or indirectly for political purposes ... [as they supply] one of the principal sources of corruption in our political affairs.” Although Congress had already made such corporate contributions illegal with the Tillman Act (1907), Roosevelt’s speech nonetheless prompted Congress to amend this law to add enforcement mechanisms with the 1910 Federal Corrupt Practices Act. Future Congresses would enlarge the sphere of “special interests” barred from direct campaign contributions through — among others — the Hatch Act (1959), restricting the political campaign activities of federal employees, and the Taft-Hartley Act (1947), prohibiting labor unions from expenditures that supported or opposed particular federal candidates.

Collectively, these laws formed the backbone of America’s campaign finance laws until they were replaced by the Federal Elections Campaign Acts (FECA) of 1971 and 1974. FECA of 1971 strengthened public reporting requirements of campaign financing for candidates, political parties and political committees (PACs). The FECA of 1974 added specific limits to the amount of money that could be donated to candidates by individuals, political parties, and PACs, and also what could be independently spent by people who want to talk about candidates. It provided for the creation of the Federal Election Commission, an independent agency designed to monitor campaigns and enforce the nation’s political finance laws. Significantly, FECA left members of the media, including corporations, free to comment about candidates without limitation, even though such commentary involved spending money and posed the same risk of quid pro quo corruption as other independent spending.

In *Buckley v. Valeo* (1976), however, portions of the FECA of 1974 were struck down by the Supreme Court. The Court deemed that restricting independent spending by individuals and groups to support or defeat a candidate interfered with speech protected by the First Amendment, so long as those funds were independent of a candidate or his/her campaign. Such restrictions, the Court held, unconstitutionally interfered with the speakers’ ability to convey their message to as many people as possible. Limits on direct campaign contributions, however, were permissible and remained in place. The Court’s rationale for protecting independent spending was not, as is sometimes stated, that the Court equated spending money with speech. Rather, restrictions on spending money for the purpose of engaging in political speech unconstitutionally interfered with the First Amendment-protected right to free speech. (The Court did mention that direct contributions to candidates could be seen as symbolic expression, but concluded that they were generally restrictable despite that.)

The decades following *Buckley* would see a great proliferation of campaign spending. By
2002, Congress felt pressure to address this spending and passed the Bipartisan Campaign Finance Reform Act (BCRA). A key provision of the BCRA was a ban on speech that was deemed “electioneering communications” — speech that named a federal candidate within 30 days of a primary election or 60 days of a general election that was paid for out of a “special interest’s” general fund (PACs were left untouched by this prohibition). An immediate First Amendment challenge to this provision — in light of the precedent set in Buckley — was mounted in McConnell v. F.E.C. (2003). But the Supreme Court upheld it as a restriction justified by the need to prevent both “actual corruption…and the appearance of corruption.”

Another constitutional challenge to the BCRA would be mounted by the time of the next general election. Citizens United, a nonprofit organization, was primarily funded by individual donations, with relatively small amounts donated by for-profit corporations as well. In the heat of the 2008 primary season, Citizens United released a full-length film critical of then-Senator Hillary Clinton entitled Hillary: the Movie. The film was originally released in a limited number of theaters and on DVD, but Citizens United wanted it broadcast to a wider audience and approached a major cable company to make it available through their “On-Demand” service. The cable company agreed and accepted a $1.2 million payment from Citizens United in addition to purchased advertising time, making it free for cable subscribers to view.

Since the film named candidate Hillary Clinton and its On-Demand showing would fall within the 30-days-before-a-primary window, Citizens United feared it would be deemed an “electioneering communications” under the BCRA. The group mounted a preemptive legal challenge to this aspect of the law in late 2007, arguing that the application of the provision to Hillary was unconstitutional and violated the First Amendment in their circumstance. A lower federal court disagreed, and the case went to the Supreme Court in early 2010.

In a 5-4 decision, the Supreme Court ruled in Citizens United v. F.E.C. that: 1) the BCRA’s “electioneering communication” provision did indeed apply to Hillary and that 2) the law’s ban on corporate and union independent expenditures was unconstitutional under the First Amendment’s speech clause. “Were the Court to uphold these restrictions,” the Court reasoned, “the Government could repress speech by silencing certain voices at any of the various points in the speech process.” Citizens United v. F.E.C. extended the principle, set 34 years earlier in Buckley, that restrictions on spending money for the purpose of engaging in political speech unconstitutionally burdened the right to free speech protected by the First Amendment.
Comprehension and Critical Thinking Questions

1. Summarize the ways in which various campaign finance laws have restricted the political activities of individuals working through such groups as corporations and unions.

2. What was the main idea of the ruling in *Buckley v. Valeo*?

3. What political activity did the group Citizens United engage in during the 2008 primary election? How was this activity potentially illegal under the BCRA?

4. How did the Supreme Court rule in *Citizens United v. F.E.C.*? In what way is it connected to the ruling in *Buckley*?

5. Do you believe that the First Amendment should protect collective speech (i.e. groups, including “special interests”) to the same extent it protects individual speech? Why or why not?

6. What if the government set strict limits on people spending money to get the assistance of counsel, or to educate their children, or to have abortions? Or what if the government banned candidates from traveling in order to give speeches? Would these hypothetical laws be unconstitutional under the reasoning the Court applied in *Buckley* and *Citizens United*? Why or why not?
### Handout F: Timeline of Campaign Finance Reform Initiatives

<table>
<thead>
<tr>
<th>DATE</th>
<th>LAW/SUPREME COURT CASE</th>
<th>MAIN EFFECT</th>
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<tbody>
<tr>
<td>1907</td>
<td>Tillman Act</td>
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<tr>
<td>1910</td>
<td>Federal Corrupt Practices Act</td>
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<td>1939</td>
<td>Hatch Act</td>
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<tr>
<td>1947</td>
<td>Taft-Hartley Act</td>
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<tr>
<td>1971</td>
<td>Federal Elections Campaign Acts</td>
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<tr>
<td>1974</td>
<td>Federal Elections Campaign Acts</td>
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<tr>
<td>1976</td>
<td><em>Buckley v. Valeo</em></td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>Bipartisan Campaign Finance Reform Act (BCRA)</td>
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<tr>
<td>2003</td>
<td><em>McConnell v. F.E.C.</em></td>
<td></td>
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<tr>
<td>2010</td>
<td><em>Citizens United v. F.E.C.</em></td>
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</table>

The F.E.C. has adopted 568 pages of regulations, 1,278 pages of explanations and justifications for those regulations, and 1,771 advisory opinions since 1975. ...[G]iven the complexity of the regulations and the deference courts show to administrative determinations, a speaker who wants to avoid threats of criminal liability and the heavy costs of defending against F.E.C. enforcement must ask a governmental agency for prior permission to speak.

If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech. All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech. The First Amendment protects the resulting speech.

At the founding, speech was open, comprehensive, and vital to society’s definition of itself; there were no limits on the sources of speech and knowledge. ...By suppressing the speech of manifold corporations, both for-profit and nonprofit, the Government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests. Factions will necessarily form in our Republic, but the remedy of ‘destroying the liberty’ of some factions is ‘worse than the disease’ [Federalist 10]. Factions should be checked by permitting them all to speak, and by entrusting the people to judge what is true and what is false...

When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.

The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy. By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials.

Rapid changes in technology — and the creative dynamic inherent in the concept of free expression — counsel against upholding a law that restricts political speech in certain media or by certain speakers. Today, 30-second television ads may be the most effective way to convey a political message. Soon, however, it may be that Internet sources ... will provide citizens with significant information about political candidates and issues. Yet, [the BCRA] would seem to ban a blog post expressly advocating the election or defeat of a candidate if that blog were created with corporate funds. The First Amendment does not permit Congress to make these categorical distinctions based on the corporate identity of the speaker and the content of the political speech.
Critical Thinking Questions

1. How would you summarize the Court’s interpretation of the First Amendment?

2. How would you evaluate the Court’s analysis of *Federalist No. 10*?

3. The Court reasoned, “The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy.” Do you agree? What effect, if any, does this ruling have on the republican principle of the United States government?
[In] a variety of contexts, we have held that speech can be regulated differentially on account of the speaker’s identity, when identity is understood in categorical or institutional terms. The Government routinely places special restrictions on the speech rights of students, prisoners, members of the Armed Forces, foreigners, and its own employees.

Unlike our colleagues, the Framers had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind. …[M]embers of the founding generation held a cautious view of corporate power and a narrow view of corporate rights … [and] they conceptualized speech in individualistic terms. If no prominent Framer bothered to articulate that corporate speech would have lesser status than individual speech, that may well be because the contrary proposition — if not also the very notion of “corporate speech” — was inconceivable.

On numerous occasions we have recognized Congress’s legitimate interest in preventing the money that is spent on elections from exerting an ‘undue influence on an officeholder’s judgment’ and from creating ‘the appearance of such influence.’ Corruption operates along a spectrum, and the majority’s apparent belief that quid pro quo arrangements can be neatly demarcated from other improper influences does not accord with the theory or reality of politics.….A democracy cannot function effectively when its constituent members believe laws are being bought and sold.

A regulation such as BCRA may affect the way in which individuals disseminate certain messages through the corporate form, but it does not prevent anyone from speaking in his or her own voice.

At bottom, the Court’s opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.

Critical Thinking Questions

1. How does the reasoning in the dissenting opinion differ from that of the Majority (Handout G)?

2. How would you evaluate the dissenters’ statement, “A democracy cannot function effectively when its constituent members believe laws are being bought and sold.”

The Framers didn’t like corporations, the dissent concludes, and therefore it follows (as night the day) that corporations had no rights of free speech.

The lack of a textual exception for speech by corporations cannot be explained on the ground that such organizations did not exist or did not speak. To the contrary ... both corporations and voluntary associations actively petitioned the Government and expressed their views in newspapers and pamphlets. For example: An antislavery Quaker corporation petitioned the First Congress, distributed pamphlets, and communicated through the press in 1790. The New York Sons of Liberty sent a circular to colonies farther south in 1766. And the Society for the Relief and Instruction of Poor Germans circulated a biweekly paper from 1755 to 1757.

The dissent says that when the Framers “constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind.” That is no doubt true. All the provisions of the Bill of Rights set forth the rights of individual men and women — not, for example, of trees or polar bears. But the individual person’s right to speak includes the right to speak in association with other individual persons. Surely the dissent does not believe that speech by the Republican Party or the Democratic Party can be censored because it is not the speech of “an individual American.” It is the speech of many individual Americans, who have associated in a common cause, giving the leadership of the party the right to speak on their behalf. The association of individuals in a business corporation is no different — or at least it cannot be denied the right to speak on the simplistic ground that it is not “an individual American.”

**Critical Thinking Questions**

1. Why does this Justice argue that the original understanding of the First Amendment does not allow for limitations on the speech of associations such as corporations and unions? Do you agree?

Use this handout to gather your thoughts in order to evaluate the Supreme Court’s opinions in *Citizens United v. F.E.C. (2010)*. Then, on your own paper, respond to the questions at the bottom of the page.

Your summary of the history of campaign Finance Reform Initiatives (**Handouts A and B**). What was the main purpose of these initiatives—at what problem(s) were they aimed?


Your summary of **Handout D**, the dissenting opinion in *Citizens United v. F.E.C. (2010)*

Your summary of **Handout E**, the concurring opinion in *Citizens United v. F.E.C. (2010)*

With which of the Supreme Court’s opinions in *Citizens United v. F.E.C. (2010)*, if any, do you most agree? Does the First Amendment protect associations of citizens and corporations from being punished for engaging in political speech? Be sure to frame your response by referring to constitutional principles such as representative government, consent of the governed, separation of powers, federalism, individual rights, and limited government.
Handout A: James Madison – Excerpts from *Federalist No. 10* (1787)

...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.

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community...

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts.
Critical Thinking Questions

1. How did Madison define “faction”?

2. Do you believe Madison would consider political parties to be factions? Explain why or why not.

3. Highlight Madison’s criticisms of public life that could be applied to public life today.

4. Madison wrote that the “distresses” of public life were sometimes blamed on ____________, but were really caused by __________________________
Handout B: Jefferson and Hamilton on the National Bank

Background: Cabinet opinions regarding constitutionality of a national bank

By the time President George Washington named Alexander Hamilton Secretary of the Treasury, Hamilton had already begun to craft a plan to assure the economic success of the new nation. Central to his plan, which was modeled on the English financial system, was the incorporation of a national bank that would stimulate the economy and establish the credit of the United States. Other members of Washington’s cabinet were skeptical. Washington asked each one to prepare a report explaining his answer to this question: Does the Constitution permit Congress to establish a national bank?

Secretary of State Thomas Jefferson interpreted the Necessary and Proper Clause narrowly, deciding that the bank was unconstitutional because it was not specifically included in the enumerated powers of Congress. Hamilton built his defense of the bank on the implied powers of the Necessary and Proper Clause. Hamilton’s argument was more persuasive to Washington and he signed the Bank Bill. These approaches to understanding the powers of the national government set the foundation for analysis of the constitutional limits on national power continuing into the present day. They also marked the beginning of two political parties.

Thomas Jefferson, Opinion on the Constitutionality of the Bill for Establishing a National Bank (1791)

I consider the foundation of the Constitution as laid on this ground that “all powers not delegated to the U.S. by the Constitution, not prohibited by it to the states, are reserved to the states or to the people” [Tenth Amendment]. To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and other powers assumed by this bill have not, in my opinion, been delegated to the U.S. by the Constitution. They are not among the powers specially enumerated...

They are not to do anything they please to provide for the general welfare... [G]iving a distinct and independent power to do any act they please which may be good for the Union, would render all the preceding and subsequent enumerations of power completely useless. It would reduce the whole instrument to a single phrase that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please and this can never be permitted.

1. Name at least two main reasons that Jefferson gave for not interpreting the powers of Congress broadly with respect to the bill for a national bank.

Alexander Hamilton’s Opinion on the National Bank (1791)

It is not denied that there are implied well as express powers, and that the former are as effectually delegated as the latter...

Then it follows, that as a power of erecting a corporation may as well be implied as any other thing, it may as well be employed as an
instrument or mean of carrying into execution any of the specified powers, as any other instrument or mean whatever. The only question must be in this, as in every other case, whether the mean to be employed or in this instance, the corporation to be erected, has a natural relation to any of the acknowledged objects or lawful ends of the government. Thus a corporation may not be erected by Congress for superintending the police of the city of Philadelphia, because they are not authorized to regulate the police of that city. But one may be erected in relation to the collection of taxes, or to the trade with foreign countries, or to the trade between the States, or with the Indian tribes; because it is the province of the federal government to regulate those objects, and because it is incident to a general sovereign or legislative power to regulate a thing, to employ all the means which relate to its regulation to the best and greatest advantage...

To establish such a right, it remains to show the relation of such an institution to one or more of the specified powers of the government. Accordingly it is affirmed, that it has a relation more or less direct to the power of collecting taxes; to that of borrowing money; to that of regulating trade between the states; and to those of raising, supporting & maintaining fleets & armies...

The constitutionality of all this would not admit of a question, and yet it would amount to the institution of a bank, with a view to the more convenient collection of taxes.... To deny the power of the government to add these ingredients to the plan, would be to refine away all government.

1. How did Hamilton reason that creation of the first national bank was a constitutional exercise of the power of Congress?

2. How did these two different approaches to the powers of Congress help set the stage for development of two different political parties?
Handout C: Tocqueville’s Observations about Political Parties in America, *Democracy in America*, Chapter 10

...[W]hen the citizens entertain different opinions upon subjects which affect the whole country alike, such, for instance, as the principles upon which the government is to be conducted, then distinctions arise that may correctly be styled parties. Parties are a necessary evil in free governments; but they have not at all times the same character and the same propensities...

The political parties that I style great are those which cling to principles rather than to their consequences; to general and not to special cases; to ideas and not to men. These parties are usually distinguished by nobler features, more generous passions, more genuine convictions, and a more bold and open conduct than the others. In them private interest, which always plays the chief part in political passions, is more studiously veiled under the pretext of the public good; and it may even be sometimes concealed from the eyes of the very persons whom it excites and impels.

Minor parties, on the other hand, are generally deficient in political good faith. As they are not sustained or dignified by lofty purposes, they ostensibly display the selfishness of their character in their actions...

America has had great parties, but has them no longer ...When the War of Independence was terminated and the foundations of the new government were to be laid down, the nation was divided between two opinions--two opinions which are as old as the world and which are perpetually to be met with, under different forms and various names, in all free communities, the one tending to limit, the other to extend indefinitely, the power of the people. The conflict between these two opinions never assumed that degree of violence in America which it has frequently displayed elsewhere. Both parties of the Americans were agreed upon the most essential points; and neither of them had to destroy an old constitution or to overthrow the structure of society in order to triumph. In neither of them, consequently, were a great number of private interests affected by success or defeat: but moral principles of a high order, such as the love of equality and of independence, were concerned in the struggle, and these sufficed to kindle violent passions.

The party that desired to limit the power of the people, endeavored to apply its doctrines more especially to the Constitution of the Union, whence it derived its name of Federal. The other party, which affected to be exclusively attached to the cause of liberty, took that of Republican. America is the land of democracy, and the Federalists, therefore, were always in a minority; but they reckoned on their side almost all the great men whom the War of Independence had produced, and their moral power was very considerable. Their cause, moreover, was favored by circumstances. The ruin of the first Confederation had impressed the people with a dread of anarchy, and the Federalists profited by this transient disposition of the multitude. For ten or twelve years, they were at the head of affairs, and they were able to apply some, though not all, of their principles; for the hostile current
was becoming from day to day too violent to be checked. In 1801 the Republicans got possession of the government: Thomas Jefferson was elected President; and he increased the influence of their party by the weight of his great name, the brilliance of his talents, and his immense popularity...

The accession of the Federalists to power was, in my opinion, one of the most fortunate incidents that accompanied the formation of the great American Union: they resisted the inevitable propensities of their country and their age. But whether their theories were good or bad, they had the fault of being inapplicable, as a whole, to the society which they wished to govern, and that which occurred under the auspices of Jefferson must therefore have taken place sooner or later. But their government at least gave the new republic time to acquire a certain stability, and afterwards to support without inconvenience the rapid growth of the very doctrines which they had combated. A considerable number of their principles, moreover, were embodied at last in the political creed of their opponents; and the Federal Constitution, which subsists at the present day, is a lasting monument of their patriotism and their wisdom...

The deeper we penetrate into the inmost thought of these parties, the more we perceive that the object of the one is to limit and that of the other to extend the authority of the people. I do not assert that the ostensible purpose or even that the secret aim of American parties is to promote the rule of aristocracy or democracy in the country; but I affirm that aristocratic or democratic passions may easily be detected at the bottom of all parties, and that, although they escape a superficial observation, they are the main point and soul of every faction in the United States...

1. Why do you think Tocqueville described political parties as a “necessary evil” in America? Why are parties necessary? Why are they evil?

2. To what extent do you think Madison would have agreed with both parts of this description by Tocqueville? In your response, refer to Federalist No. 10.
Background: In Federalist No. 10, Madison explained that factions are a natural result of human liberty and cannot be prevented from forming in a free society. Therefore, government should be organized to control the effects of factions. Madison went on to refer to principles such as limited government, republicanism, separation of powers, and checks and balances, in addition to the need for virtue in the citizens themselves. It was clear that the nation could not rely on virtue alone to control the effects of faction: “It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm.” Federalist No. 10. However, it is also apparent that the founding generation understood the crucial role that virtue would play in preserving and extending liberty in America. The Founders knew that people cannot rely merely on government institutions and systems to protect our rights.

Directions: Read the following passages and be prepared to summarize the Founders’ opinions regarding the necessity of a virtuous citizenry.

George Washington expressed his thoughts on civic virtue and self-government in a letter to John Jay (1786): “I think there is more wickedness than ignorance, mixed with our councils. ... Yet, something must be done, or the fabric must fall. It certainly is tottering! Ignorance & design, are difficult to combat. Out of these proceed illiberality, improper jealousies, and a train of evils which oftentimes, in republican governments, must be sorely felt before they can be removed. The former, that is ignorance, being a fit soil for the latter to work in, tools are employed which a generous mind would disdain to use; and which nothing but time, and their own puerile or wicked productions, can show the inefficacy and dangerous tendency of. I think often of our situation, and view it with concern. From the high ground on which we stood—from the plain path which invited our footsteps, to be so fallen!—so lost! is really mortifying. But virtue, I fear, has, in a great degree, taken its departure from our Land, and the want of disposition to do justice is the source of the national embarrassments; for under whatever guise or colorings are given to them, this, I apprehend, is the origin of the evils we now feel, & probably shall labor for sometime yet.”

Federalist No. 51 (1788): “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.”

Federalist No. 55 (1788): “As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust:
So there are other qualities in human nature which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form...Were the pictures which have been drawn by the political jealousy of some among us, faithful likenesses of the human character the inference would be that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another...

**Federalist No. 57 (1788):** “The aim of every political Constitution is or ought to be first to obtain for rulers, men who possess most wisdom to discern, and most virtue to pursue the common good of the society, and in the next place, to take the most effectual precautions for keeping them virtuous, whilst they continue to hold their public trust.”

**Federalist No. 71 (1788):** “The republican principle demands that the deliberate sense of the community should govern the conduct of those to whom they entrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests.”

**In his Farewell Address, Washington reiterated (1796):** “...virtue or morality is a necessary spring of popular government... indissoluble union between virtue and happiness... [there are] solid rewards of public prosperity and felicity.”
Handout A: *Federalist No. 10*, by James Madison (1787)

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community.

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.

[Because] the *causes* of faction cannot be removed ... relief is only to be sought in the means of controlling its *effects*....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.

* (Italics are Madison’s)*

**Critical Thinking Questions**

1. How does James Madison define a faction?

2. What does Madison argue serves as a “check” on the influence various factions may have on society?
Critical Thinking Questions

1. How does this cartoon express the concern of “quid pro quo” corruption?

2. What is the significance of the closed door with the sign above it in the upper left hand corner of the cartoon?

3. Did Madison’s assertion in Federalist No. 10 (Handout A) — that the republican principle will serve as a check on the influence of factions — apply in the cartoon’s time period? Does it apply today?
Handout C: “Another Dam Breaks”

**Background:** In the 2010 case, Citizens United v. F.E.C., the U.S. Supreme Court ruled in a 5-4 decision that the First Amendment protects citizens, or associations of citizens, from being punished for engaging in political speech.

![Cartoon Image](Image)

Critical Thinking Questions

1. What does the cartoonist predict will be the effect of the *Citizens United* ruling?

2. What assumptions does the cartoonist seem to make about voters? Are they valid assumptions? Explain.

3. Compare and contrast this cartoon to Handout B: “The Bosses of the Senate,” with respect to the issue(s) they highlight. How do you think James Madison would react to these two cartoons?
Handout A: The Bill of Rights Today

**Directions:** Using the Teaching with Current Events pages at www.BillofRightsInstitute.org, or other sources, find current events articles that relate to the Bill of Rights. In the “Ways this Issue Might Touch My Life” column, explain the relationship, if any, between the events described in the article and civil discourse/petitioning. Be prepared to discuss these articles in class, and remember to practice civil discourse when discussing your opinion regarding the issues with your classmates.

<table>
<thead>
<tr>
<th>Headline / Topic of Article</th>
<th>Summary of Article</th>
<th>Related Amendment</th>
<th>Ways this Issue Might Touch My Life</th>
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Handout B: Citizenship Acrostic

Directions: Using the format below, create an acrostic poem that defines what a good citizen should know, think, believe, do, or say. You can include actions, ideas, characteristics, and feelings in your poem.

C –

I –

T –

I –

Z –

E –

N –
The former Congressman stood before his audience in Columbus, Ohio, and began to speak. He condemned the Civil War effort.

He condemned the Lincoln administration. He argued that the war was not meant to save the Union. Instead, he declared, it was intended to establish a despotic government, one that would free blacks and enslave whites. The government was refusing to acknowledge the states’ right to self-government. The government had forced them back into the Union. The government, he argued, had become a monarchy disguised. President Lincoln was “King Lincoln.” If the people of Ohio did not pay attention, he warned, the government that had overstepped its authority with the southern states would do so again, this time with individuals just like them.

On April 30, 1863, Clement Laird Vallandigham appealed to the audience to consider his views. He knew that the United States government would not.

An outspoken states’ rights advocate, Vallandigham was addressing the home crowd. A native of Lisbon, Ohio, he was a renowned lawyer and former state representative. Although he had been unsuccessful in his earlier bids for public office, he narrowly won a Democratic seat in the U.S. House of Representatives in 1858. He was popular and was reelected in 1860.

Vallandigham continued to oppose the federal military action against the southern states after the election of Abraham Lincoln as president. Soon he became known as a Copperhead, the term for Northern Democrats who opposed Lincoln and supported immediate peace with the South. He was not reelected in 1862, a result many attributed to district gerrymandering.

When he conceived the speech, Vallandigham expected to rally public support against the war. Major General Ambrose E. Burnside, Ohio’s military governor, had issued General Order No. 38, which declared in part:

“... All persons within our lines who commit acts for the benefit of the enemies of our country will be tried as spies or traitors, and if convicted will suffer death... The habit of declaring sympathy for the enemy will not be allowed in this department. Persons committing such offences will be at once arrested, with a view to being tried as above stated or sent beyond our lines into the lines of their friends...”

Vallandigham considered the consequences if he went ahead with his speech. He decided to deliver it as planned. It was his right, he declared, under “General Order No. 1, the Constitution!” He was arrested one week later.

The night of his arrest, troops escorted Vallandigham out of his house and into military custody. The next day, he was charged with “declaring sympathy for the enemy” and uttering disloyal sentiments. The military court also denied his constitutional right to a writ of habeas corpus, the right to question the government about the lawfulness of his arrest.

Vallandigham, a lawyer, forcefully argued that the military court had no jurisdiction over him. He was a United States citizen. He had committed no crime against the Constitution or its laws. He issued the following statement from his cell:

“TO THE DEMOCRACY OF OHIO: I am here, in a military bastile for no other offence than my political opinions, and the defence of them and the rights of the people, and of your constitutional liberties.
Speeches made in the hearing of thousands of you, in denunciation of the usurpation of power, infractions of the Constitution and laws, and of military despotism, were the causes of my arrest and imprisonment. I am a Democrat; for Constitution, for law, for Union, for liberty; this is my only crime. For no disobedience to the Constitution, for no violation of law, for no word, sign or gesture of sympathy with the men of the South, who are for disunion and Southern independence, but in obedience to their demand, as well as the demand of Northern Abolition disunionists and traitors, I am here today in bonds; but 'Time, at last, sets all things even."

"Meanwhile, Democrats of Ohio, of the Northwest, of the United States, be firm, be true to your principles, to the Constitution, to the Union, and all will yet be well. As for myself, I adhere to every principle, and will make good, through imprisonment and life itself, every pledge and declaration which I have ever made, uttered or maintained from the beginning. To you, to the whole people, to time I again appeal. Stand firm! Falter not an instant!"

In court, Vallandigham was convicted and sentenced to two years in military prison. Ohio Peace Democrats voiced their outrage and defended Vallandigham in public. How could a civilian be tried in a military court for his political speech? What did that say about the Constitution and First Amendment?

The government claimed that opposition speech during times of war posed a legitimate threat to the security of the United States. To many in the Lincoln administration, Vallandigham's speech was not political expression worthy of public consideration. It was a call to treason, and officials who believed so did everything in their power to suppress it.

Vallandigham, on the other hand, claimed that he had a right to his views, the public had a right to consider them, and the government should respect that under the supreme law in the land—the United States Constitution. He appealed his case to the Supreme Court of the United States.

In 1864, in Ex Parte Vallandigham, the Court unanimously refused to hear Vallandigham’s case, saying it had no jurisdiction to do so. The constitutional question—can the government arrest and try civilians in a military court—remained unanswered. To quell the controversy and curb support for the prisoner, President Lincoln commuted his sentence. Vallandigham was banished behind Confederate lines.

Vallandigham remained there only a short time. He moved to Canada, and managed his campaign for governor of Ohio. When he returned to his home state in secret in 1864, he did not shy away from speaking out against the war. President Lincoln and military officials, this time, decided to leave him alone. In the years that followed the war, Clement Laird Vallandigham remained an influential member of the Democratic Party, exercising his free speech rights in support of Reconstruction.

Critical Thinking Questions

1. In what ways did President Lincoln consider Vallandigham's right to free speech?
2. What are the positive and negative consequences of giving consideration to all points of view?
3. During times of war, how much consideration do you think the government should give to a dissenting citizen’s speech? Explain.
4. How, if at all, does Vallandigham’s story relate to civil discourse?
“Good Evening. Tonight, See It Now devotes its entire half hour to a report on Senator Joseph McCarthy told mainly in his own words and pictures.” Veteran journalist and television host Edward R. Murrow looked serious and composed.

The nation held its breath, eyes riveted to the flickering screen. It was March 9, 1954. The Cold War was at its height and Americans were concerned and vigilant about Communist influences at home and abroad. The domestic controversy swirled around the accusations and actions of Wisconsin Senator Joseph McCarthy.

Four years earlier, McCarthy had begun to tap into Americans’ growing fears about Communism. He claimed that the State Department was “riddled with Communists.” To prove it, he claimed to have a list of 205 names. As time went on, his finger-pointing continued. At every opportunity he blamed the deteriorating morality of America on suspected Communists.

Murrow was among those who thought that McCarthy should not have a one-sided debate. Nor should he be able to intimidate the American people. A veteran combat journalist, Murrow rose to fame with his riveting radio reports from Europe during World War II. His catchphrase “This is London . . .” could be heard over the sounds of bombs and air raid sirens. His report from Nazi concentration camps at the end of the war had moved many to tears. The public trusted his reporting.

After the war, Murrow returned to the United States, received two promotions, and, while covering the Korean War, began presenting weekly digests of news on the radio called Hear It Now. Television gained popularity in the early fifties, and he moved his show to CBS TV and re-named it See It Now.

As a journalist, Murrow fervently believed in the power of the press to seek and uncover the truth. He thought it was the responsibility of a free press to consider all points of view. At the same time, he believed that Communist threats abroad could best be countered by free and open expression at home.

In October 1953, Murrow aired the report that would signal the beginning of a public conflict with McCarthy—and the end of the senator’s grip on the nation. Murrow had learned that the Air Force Reserve had dismissed a young lieutenant, Milo Radulovich, because his father and sister were thought to hold “un-American views.” Yet no one accused Radulovich of having the same views. Authorities recommended that he condemn his father and sister in order to save his position. Radulovich refused. He declared that was not what it meant to be an American.

When Murrow aired the story on See It Now, he openly questioned the evidence for the charges. “Was it hearsay, rumor, gossip, slander, or was it hard ascertainable fact that could be backed by creditable witnesses? We do not know.” A public outcry followed, and Radulovich was given back his commission.

It was not long until Murrow learned that he himself would be the next object of McCarthy’s attack. The senator’s “evidence” that Murrow was “on the Soviet’s payroll” was that he worked during the 1930s as an advisor to the Institute of International Education, an organization that
sponsored exchange seminars between American and Soviet professors. Murrow quickly responded.

Using the public forum most available to him, Murrow determined to tell the truth about McCarthy’s tactics, without condemning or slandering him. He wanted the public to consider what McCarthy had done and said, and come to their own conclusions. Over the next four months, Murrow and the See It Now staff organized audio and film clips for the show. Murrow told fellow CBS journalist Joseph Wershba, “The only thing that counts is the right to know, to speak, to think—that, and the sanctity of the courts. Otherwise it’s not America . . . we must not confuse dissent with disloyalty.”

Murrow explained the purpose of the show, “If none of us ever read a book that was ‘dangerous,’ nor had a friend who was ‘different,’ or never joined an organization that advocated ‘change,’ we would all be just the kind of people Joe McCarthy wants.” Consideration of other points of view was essential to Murrow’s belief in harmony and liberty. McCarthy would not consider his opponents’ viewpoints; Murrow considered them all.

As promised, the March 9 See It Now broadcast offered a portrait of Joseph McCarthy “in his own words and pictures.” Murrow offered the public reels of footage of McCarthy for their consideration: McCarthy mocking President Eisenhower, McCarthy insulting an army general, McCarthy challenging the integrity of his critics, and McCarthy telling half-truths.

Murrow concluded the show with these words, “We must not confuse dissent with disloyalty . . . We will not walk in fear, one of another. We will not be driven by fear into an age of unreason if we dig deep in our history and our doctrine, and remember that we are not descended from fearful men, not from men who feared to write, to speak, to associate and to defend causes which were for the moment unpopular . . . we cannot defend freedom abroad by deserting it at home.”

Following the broadcast, public opinion shifted sharply against the senator. Six days later, McCarthy demanded a chance to respond. Murrow and CBS agreed to a second broadcast. In his rebuttal, he referred to Murrow, among other things, as “the leader of the jackal pack” of his opponents. The appearance did little to restore public confidence. The senator’s hold on the nation’s fear and imagination was over. The spell was broken. Nine months later, the United States Senate censured Joseph McCarthy.

Murrow was not the only journalist who challenged McCarthy, but he is credited with skillfully using a new medium, television, so that the American people could consider the validity of McCarthy’s views. As Murrow later acknowledged, “The timing was right and the instrument was powerful. . . There was a great conspiracy of silence at the time. When there is such a conspiracy and somebody makes a loud noise, it attracts all the attention.”

Throughout his career, Murrow continued to report on newsworthy events, sharing contrasting points of view with the American public. He never assumed that he had all the answers. His report that March night demonstrated his ability to present the evidence and let the public consider all points of view—even those of Joseph McCarthy. As a fellow reporter commented when Murrow left CBS, “To whatever extent television has found its voice of conscience, purpose, and integrity, it was as much the doing of Edward R. Murrow as any other single individual in one medium.”
Critical Thinking Questions

1. In what ways did Edward R. Murrow make it possible for people to consider a variety of points of view?

2. Murrow believed in creating an open forum for public debate. What are the pros and cons of doing so?

3. In what ways can you exercise consideration for many different points of view?

4. How, if at all, does Murrow’s story relate to civil discourse?
Handout E: Assembly and Petition Cases

(Directions: For each case, be prepared to discuss the following:

1. What are the facts of the case?
2. What constitutional question did the Supreme Court answer?
3. Why is this case relevant today?
4. How is this case related to the concept of civil discourse?

De Jonge v. Oregon (1937)

- Dirk De Jonge went to a meeting of the Communist Party and talked to the audience.
- He spoke about jail conditions and a strike going on in Portland.
- Police raided the meeting and arrested De Jonge under a law that made it a crime to call for unlawful activities for political revolution.
- De Jonge claimed he had not called for unlawful action. He had just gone to a meeting of a group that favors political revolution and discussed current events.
- In a unanimous opinion written by Chief Justice Hughes, the Supreme Court noted that De Jonge did not actually call for immediate violent actions. The Court therefore held that the First Amendment protected De Jonge’s freedom of speech and assembly. Attending a meeting of the Communist Party could not, by itself, be reason for arresting someone.

Cox v. Louisiana (1965)

- Elton Cox led 2,000 students in an anti-discrimination march to the state courthouse.
- Protestors followed police directions and did not disturb traffic.
- Cox told protestors that they should demand service at nearby segregated restaurants.
- When they heard the protestors’ plans, police pushed them away with tear gas.
- Cox was arrested the next day for disturbing the peace.
- In a unanimous opinion written by Justice Goldberg, the Supreme Court ruled his arrest was unconstitutional because the demonstration did not result in a breach of the peace. Calling for actions that might result in violence (blacks asking to be served at whites-only lunch counters) was also not a breach of the peace. Freedom of assembly cannot be denied because the government disagrees with someone’s message.)
Gregory v. City of Chicago (1969)

- Civil rights demonstrators marched to the mayor’s house in Chicago to ask for desegregation in public schools.
- Mr. Gregory addressed the marchers and said: “First we will go over to the snake pit [city hall]. When we leave there, we will go out to the snake’s house [the mayor’s home]. Then, we will continue to go out to Mayor Daley’s home until he [desegregates the schools].”
- The marchers sang into the evening but stopped at 8:30 P.M.
- The demonstrators were peaceful, but police worried about the chance of violence as more and more people came to see what was going on.
- At 9:30 P.M., police told the demonstrators to leave or they would be arrested. They did not leave, and were arrested for disorderly conduct.
- In a unanimous opinion written by Chief Justice Warren, the Supreme Court ruled that the demonstration was “peaceful and orderly,” and therefore it was “well within the sphere of conduct protected by the First Amendment.”

Edwards v. South Carolina (1963)

- Almost 200 civil rights protestors organized a march to the South Carolina State House.
- The marchers broke into groups of 15 and walked and sang in protest of segregation policies.
- The marchers were peaceful, remained on public property, and did not disrupt traffic.
- Thirty police officers ordered the group to leave. The marchers did not obey the order.
- The protestors were arrested and charged with breech of the peace.
- In a 8-1 decision written by Justice Stewart, the Supreme Court ruled that South Carolina had violated the marchers’ rights to free speech and assembly. The Court explained that the marchers were exercising their First Amendment rights “in their most pristine and classic form.” Further, the Court held that the First Amendment ensures that a state cannot arrest people for “the peaceful expression of unpopular views” as South Carolina had done.

Lloyd v. Tanner (1972)

- Five students passed out leaflets in protest of the Vietnam War inside a privately-owned shopping mall.
- The five young people were quiet, orderly, and did not litter. One shopper complained.
- Security guards told the students they were trespassing and they would be arrested if they did not stop handing out the leaflets. The guards suggested they move outside to the public sidewalk.
The students argued that even though the mall was privately owned, that it served the purpose of a public business district and therefore they should be able to hand out their leaflets peacefully.

In a 5-4 decision written by Justice Powell, the Supreme Court ruled that people do not have a First Amendment right to assemble on private property. The Court noted that just because the mall is open to the public, “there is no open-ended invitation to the public to use the center for any and all purposes.” The Court went on to explain that the First Amendment “safeguards the rights of free speech and assembly by limitations on state action, not on action by the owner of private property...”
Chapter V

Only those associations that are formed in civil life without reference to political objects are here referred to. The political associations that exist in the United States are only a single feature in the midst of the immense assemblage of associations in that country. Americans of all ages, all conditions, and all dispositions constantly form associations. They have not only commercial and manufacturing companies, in which all take part, but associations of a thousand other kinds, religious, moral, serious, futile, general or restricted, enormous or diminutive. The Americans make associations to give entertainments, to found seminaries, to build inns, to construct churches, to diffuse books, to send missionaries to the antipodes; in this manner they found hospitals, prisons, and schools. If it is proposed to inculcate some truth or to foster some feeling by the encouragement of a great example, they form a society. Wherever at the head of some new undertaking you see the government in France, or a man of rank in England, in the United States you will be sure to find an association.

I met with several kinds of associations in America of which I confess I had no previous notion; and I have often admired the extreme skill with which the inhabitants of the United States succeed in proposing a common object for the exertions of a great many men and in inducing them voluntarily to pursue it.

I have since traveled over England, from which the Americans have taken some of their laws and many of their customs; and it seemed to me that the principle of association was by no means so constantly or adroitly used in that country. The English often perform great things singly, whereas the Americans form associations for the smallest undertakings. It is evident that the former people consider association as a powerful means of action, but the latter seem to regard it as the only means they have of acting.

Thus the most democratic country on the face of the earth is that in which men have, in our time, carried to the highest perfection the art of pursuing in common the object of their common desires and have applied this new science to the greatest number of purposes. Is this the result of accident, or is there in reality any necessary connection between the principle of association and that of equality?

Chapter VI

The political activity prevailing in the United States is something one could never understand unless one had seen it. No sooner do you set foot on American soil than you find yourself in a sort of tumult; a confused clamor rises on every side, and a thousand voices are heard at once, each expressing some social requirements. All around you everything is on the move: here the people of a district are assembled to discuss...
the possibility of building a church; there they are busy choosing a representative; further on, the delegates of a district are hurrying to town to consult about some local improvements; elsewhere it’s the village farmers who have left their furrows to discuss the plan for a road or a school…

Summary:
Handout A: The Economic Problem

**Directions:** Sitting in groups of four or five, students will brainstorm answers to the following questions. One student will serve as the recorder and will write down the groups’ responses. Another student will report the groups’ outcomes to the rest of the class at the end of the time your teacher designates for brainstorming.

**The economic problem:** The universal economic problem is that resources are scarce and human wants are unlimited.

1. Your friend really likes a t-shirt that you purchased last week at a concert by your mutually favorite musical group. You purchased the very last shirt in your size and there are no more available. She asks you if there were any way she might obtain the shirt from you. Although a bit reluctant, you might be willing to do so.

   What are at least three ways that you could solve this problem in a way that both of you would be happy?

2. If, as the economic problem states, we have limited resources, but unlimited wants, what does this make individuals and societies do? For example, if you have saved $300 and there is a cell phone you love for $250, but you also need to take a date to the prom, which will cost $300:
   
   a. Can you do both? Why can you/why can’t you?
   
   b. What does this situation force you to do?
   
   c. If you choose to purchase the cell phone, what must you give up (Remember, it is not just the money that you give up!)?

3. The economic problem means that, both individually and socially, we must make choices and that all choices have costs. Economists understand that costs are not only those that we pay in money (“explicit costs”), but also the costs of the things that we give up to get what we want (“implicit costs”). Let’s say that you have the choice of going to a movie for three hours with your friends (which costs a total of $15 for the ticket and snacks) OR you can babysit for the same time for $10 an hour. You choose to babysit. What are the TOTAL costs of this decision to you (don’t forget, costs are more than money, they are what you give up)? (Name and describe at least four.)

4. Entire societies must also make these economic decisions. For example, assume that people in the United States decide to have their health care provision run through the government. Because someone must pay for these services, taxes (payments governments take from people) for most people will increase substantially. Also, there are a limited number of physicians, nurses, medicine,
and medical equipment. (Remember costs and benefits include ALL costs and benefits, both in money and the other things one gives up or gains.)

a. What benefits result from government (taxpayer-funded) provision of health care?

b. If you were a patient and you had “free” health care, how often would you go to your doctor? What treatments, both in number and quality, would you demand if you were sick compared to those you would ask for if you were paying for them yourself? Why?

c. If you were a physician, what problems would you face if no patients had directly to pay for the cost of their care?

d. As a physician, if not legally prohibited, how would you solve this problem?

e. Although they differ widely, why do most advanced societies not grant completely “free” healthcare to every person?

5. On the whole, which of the following, according to the definitions your teacher provided, is a relatively "scarce" resource in the modern world? Explain why/why not for each.

a. Polluted salt water

b. Oil

c. University-educated workers

d. Machines that produce no-bounce ping pong balls

e. A woman who has an idea to create a new way of ice-skating

f. A psychology major from a poor university

g. Wood

h. Waste sludge from an iron foundry

6. What role do you believe prices play in solving the economic problem in a modern society? How do prices accomplish this?
Opportunity costs: The next-best alternative you have for a given decision. Because of the reality of scarcity, every decision we make has a cost. We must give up something to get something else.

But what exactly is it that we give up? Economists recognize that costs of making decisions are not merely in terms of money—what they call “explicit costs”—but are also in terms of what we could have otherwise done or had—what they call “implicit costs”. They refer to these explicit and implicit costs.

Consider the situations below and determine what the opportunity costs of making each choice are.

1. Several friends have asked you to go to a movie tonight. It will cost $15 and take the entire evening. On the other hand, your boss at Cheezy Burger has asked if you can fill in for a sick colleague tonight. If you choose to, you will be paid $30 and he would so grateful if you could come in that he will give you the next two Saturdays off. You could use this time, because you have a paper due for your American History class in two weeks.

You choose to go to the movies. You tell your friend who takes economics that you are glad you did so, because it really didn’t cost you very much. She disagrees, and says you actually had to give up quite a bit, and your opportunity costs of not going to work were quite high. What did she mean? In other words, what were the true costs of your choice?

   a. What were your explicit costs of going to the movies?
   b. What were your implicit costs of going to the movies?

2. Like many young people, you are faced with the choice of going to college/tech school or going straight to work. Let’s say that the following are your annual potential money costs/gains over the next four years. Assume that the costs of food, clothes, housing, and transportation are the same whether you choose to go to college or to work.

   Food: $5,000
   Clothes: $1,500
   Housing: $6,000
Handout B: Page 2

Transportation: $2,500
Annual income if you work: $25,000
Tuition if you go to college: $12,500
Costs of books and supplies: $1,500
Starting salary if you go to college: $35,000

You choose to go to college for four years. Now, determine the opportunity cost of this decision.

a. What are the explicit costs of this decision?

b. What are the implicit costs of this decision? (Remember, this includes all of the non-money costs of choosing not to go to college!)

c. Why did you not include all of the above categories in your decision? If it costs so much to go to college, why would you make the decision to do so?
# Handout A: Trading Game Score Sheet

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Handout B: Theories of Value

Directions: Read the excerpts below and answer the questions on Handout C: Theories of Value Questions. (Note: Clarifying information on each excerpt can be found in the margins.)

Background: Scottish Enlightenment philosopher Adam Smith, the father of modern economics, wrote An Inquiry into the Nature and Causes of the Wealth of Nations in 1776. The book is widely regarded as the most influential work on economics in history. David Ricardo was an early nineteenth century English investor who developed one of the most important theories in economics, the theory of comparative advantage. William Stanley Jevons, an English economist in the third quarter of the nineteenth century, was one of the developers of the utility theory of value and of “marginalism”. Alfred Marshall, another English economist, wrote the most influential economics textbook of the late nineteenth and early twentieth centuries, Principles of Economics. In that book, among other things, Marshall developed the current mathematical models of supply and demand. Through these excerpts, we understand that subjective value is the most widely-held understanding of value.

Excerpts from An Inquiry Into the Nature and Causes of the Wealth of Nations by Adam Smith (1776)

Book I, Chapter 4: The Diamond-Water Paradox

The word VALUE, it is to be observed, has two different meanings, and sometimes expresses the utility of some particular object, and sometimes the power of purchasing other goods [that] the possession of that object conveys. The one may be called ‘value in use;’ the other, ‘value in exchange.’ The things [that] have the greatest value in use have frequently little or no value in exchange; and on the contrary, those [that] have the greatest value in exchange have frequently little or no value in use. Nothing is more useful than water: but it will purchase scarce any thing; scarce any thing can be had in exchange for it. A diamond on the contrary, has scarce any value in use; but a very great quantity of other goods may frequently be had in exchange for it. Smith distinguishes “value in use” (like the value we place on water) from “value in exchange” (like the value we assign to diamonds). We find value in both, but the nature of that value is different.
Excerpts from *On the Principles of Political Economy and Taxation* by David Ricardo (1821)

Chapter 1, Section I: On Value (Italics are the author’s own.)

*The value of a commodity, or the quantity of any other commodity for which it will exchange, depends on the relative quantity of labor that is necessary for its production, and not on the greater or less compensation that is paid for that labor.*

...If the quantity of labor realized in commodities, regulate their exchangeable value, every increase of the quantity of labor must augment the value of that commodity on which it is exercised, as every diminution must lower it.

Excerpt from *The Theory of Political Economy* by William Stanley Jevons (1888)

Chapter 1, Introduction: On the Utility Theory of Value

Repeated reflection and inquiry have led me to the somewhat novel opinion, that value *depends entirely upon utility*. Prevailing opinions make labor rather than utility the origin of value; and there are even those who distinctly assert that labor is the cause of value. I show, on the contrary, that we have only to trace out carefully the natural laws of the variation of utility, as depending upon the quantity of commodity in our possession, in order to arrive at a satisfactory theory of exchange, of which the ordinary laws of supply and demand are a necessary consequence.

This theory is in harmony with facts; and, whenever there is any apparent reason for the belief that labor is the cause of value, we obtain an explanation of the reason. Labor is found often to determine value but only in an indirect manner, by varying the degree of utility of the commodity through an increase or limitation of the supply.

Excerpts from *Principles of Economics* by Alfred Marshall (1920)

Book 5, Chapter 3: On the Interaction of Supply and Demand

When therefore the amount produced (in a unit of time) is such that the demand price is greater than the supply price, then sellers receive more than is sufficient to make it
worth their while to bring goods to market to that amount; and there is at work an active force tending to increase the amount brought forward for sale. On the other hand, when the amount produced is such that the demand price is less than the supply price, sellers receive less than is sufficient to make it worth their while to bring goods to market on that scale; so that those who were just on the margin of doubt as to whether to go on producing are decided not to do so, and there is an active force at work tending to diminish the amount brought forward for sale. When the demand price is equal to the supply price, the amount produced has no tendency either to be increased or to be diminished; it is in equilibrium.

...When demand and supply are in equilibrium, the amount of the commodity [that] is being produced in a unit of time may be called the *equilibrium amount*, and the price at which it is being sold may be called the *equilibrium price*.

...We might as reasonably dispute whether it is the upper or the under blade of a pair of scissors that cuts a piece of paper, as whether value is governed by utility or cost of production.

In the same way, when a thing already made has to be sold, the price which people will be willing to pay for it will be governed by their desire to have it, together with the amount they can afford to spend on it.


Part V, Chapter XVII: Changes of the Magnitude in the Price and Labor-Power and in Surplus-Value

V.XVII.1

The value of labor-power is determined by the value of the necessaries of life habitually required by the average laborer. The quantity of these necessaries is known at any given epoch of a given society, and can therefore be treated as a constant magnitude. What changes, is the value of this quantity. There are, besides, two other factors that enter into the determination of the value of labor-power. One,
the expenses of developing that power, which expenses vary with the mode of production; the other, its natural diversity, the difference between the labor-power of men and women, of children and adults. The employment of these different sorts of labor-power, an employment which is, in its turn, made necessary by the mode of production, makes a great difference in the cost of maintaining the family of the laborer, and in the value of the labor-power of the adult male. Both these factors, however, are excluded in the following investigation.

I assume (1) that commodities are sold at their value; (2) that the price of labor-power rises occasionally above its value, but never sinks below it.

On this assumption we have seen that the relative magnitudes of surplus-value and of price of labor-power are determined by three circumstances; (1) the length of the working day, or the extensive magnitude of labor; (2) the normal intensity of labor, its intensive magnitude, whereby a given quantity of labor is expended in a given time; (3) the productiveness of labor, whereby the same quantum of labor yields, in a given time, a greater or less quantum of product, dependent on the degree of development in the conditions of production. Very different combinations are clearly possible, according as one of the three factors is constant and two variable, or two constant and one variable, or lastly, all three simultaneously variable. And the number of these combinations is augmented by the fact that, when these factors simultaneously vary, the amount and direction of their respective variations may differ. In what follows the chief combinations alone are considered.

On these assumptions the value of labor-power, and the magnitude of surplus-value, are determined by three laws.

(1.) A working day of given length always creates the same amount of value, no matter how the productiveness of labor, and, with it, the mass of the product, and the price of each single commodity produced, may vary.

If the value created by a working day of 12 hours be, say, six shillings, then, although the mass of the articles produced varies with the productiveness of labor, the only result is that the value represented by six shillings is spread over a
greater or less number of articles.

(2.) Surplus-value and the value of labor-power vary in opposite directions. A variation in the productiveness of labor, its increase or diminution, causes a variation in the opposite direction in the value of labor-power, and in the same direction in surplus-value...

(3.) Increase or diminution in surplus-value is always consequent on, and never the cause of, the corresponding diminution or increase in the value of labor-power.

Since the working-day is constant in magnitude, and is represented by a value of constant magnitude, since, to every variation in the magnitude of surplus-value, there corresponds an inverse variation in the value of labor-power, and since the value of labor-power cannot change, except in consequence of a change in the productiveness of labor, it clearly follows, under these conditions, that every change of magnitude in surplus-value arises from an inverse change of magnitude in the value of labor-power. If, then, as we have already seen, there can be no change of absolute magnitude in the value of labor-power, and in surplus-value, unaccompanied by a change in their relative magnitudes, so now it follows that no change in their relative magnitudes is possible, without a previous change in the absolute magnitude of the value of labor-power.
Handout C: What Creates Value?

Directions: Read the documents in Handout B and then answer the following questions thoroughly. Be prepared to share your answers with the class when finished.

Excerpts from An Inquiry Into the Nature and Causes of the Wealth of Nations by Adam Smith (1776)

You are a diamond miner who has collected a multi-million dollar fortune in diamonds. To sell your diamonds in the capital city, you need to cross an enormous desert. You get lost, however, and have to drink your last drop of water.

After a day baking in the sun and on the verge of death, you encounter a man with a single, ice-cold bottle of water.

1. How much of your diamond fortune would you pay for that bottle of water? Why?

2. Why does the relative value of water and diamonds change?

3. Smith defines this difference in perceived value as “value in use” versus “value in exchange”? What does he mean?

Excerpts from On the Principles of Political Economy and Taxation by David Ricardo (1821)

The labor theory of value states that the value of a manufactured good is based on the amount of labor that went into the production of the product. Because labor is the highest cost to producers, this implies that the higher the input costs of the product, the higher the price required to purchase it.

1. Because they create the product, is a worker’s labor the sole source of added value of a product? Who or what else adds to the value of the product?

2. What does this theory imply about a good that a lazy, low-skilled worker produces versus an identical good that is produced by an enterprising and high-skilled worker produces?

3. What if a team of highly-skilled workers spent a year making one pickle-flavored lollipop? The cost of labor is very high. Does that mean the value of the end product will be high? Why or why not?

Excerpt from The Theory of Political Economy by William Stanley Jevons (1888)

Jevons states that utility, or the satisfaction or happiness a good or service brings us, is the sole source of value. But, as is implied in this excerpt, that satisfaction diminishes as we obtain more and more of the commodity. Therefore, the more of a good we obtain, the less we are willing to pay for it.
1. In the first document, Smith discussed the diamond-water paradox. The labor theory of value could not explain why there was this difference of value between diamonds and water. How does the utility theory solve this problem?

2. Many economists believe that there is no “correct” price and that prices are not “too high” or “too low”. Instead, they say that value is subjective. What do they mean by this?

3. Your friend really wants to go to a concert that you have tickets to. You paid $40 for the tickets. She is willing to pay $60 for them. You sell them to her. What must be true about your utility for the tickets compared to your friend's utility?

Excerpts from *Principles of Economics* by Alfred Marshall (1920)

Marshall states, “We might as reasonably dispute whether it is the upper or the under blade of a pair of scissors that cuts a piece of paper, as whether value is governed by utility or cost of production.”

1. How does this relate to both the labor theory of value and the utility theory of value?

2. According to Marshall, how do prices adjust when the demand price is less than the supply price (and vice versa)?

3. Who makes the decision what the equilibrium price of a good or service should be?


Marx states, “The value of labor-power is determined by the value of the necessaries of life habitually required by the average laborer. The quantity of these necessaries is known at any given epoch of a given society, and can therefore be treated as a constant magnitude.”

1. Marx believed that the value of labor is dependent upon not only the wages paid to the workers, but also necessities such as food, shelter, and clothing for the workers. Explain how this theory could change the way that value is determined.

2. According to Marx, what are the circumstances that lead to the value of a product or commodity?
Handout D: Excerpts from *I, Pencil* by Leonard E. Read

**Directions:** When completed, use these answers to write an essay in response to one of the three prompts on *Handout E: I, Pencil Essays.*

**Background:** First published in 1958, "I, Pencil" is one of the most beloved and influential essays on the nearly miraculous ability of the market economy to coordinate the actions of millions of individuals in the production of a simple good—in this case, a pencil—with no central planner or design. It provides an excellent insight into how economist and philosopher Adam Smith’s concept of how an “Invisible Hand” that guides a market economy, works. The author, Leonard E. Read (1898-1983), was the founder and president of the Foundation for Economic Education.

*I, Pencil*

**My Family Tree as told to Leonard E. Read**

I am a lead pencil—the ordinary wooden pencil familiar to all boys and girls and adults who can read and write.

Writing is both my vocation and my avocation; that’s all I do.

You may wonder why I should write a genealogy. Well, to begin with, my story is interesting. And, next, I am a mystery—more so than a tree or a sunset or even a flash of lightning. But, sadly, I am taken for granted by those who use me, as if I were a mere incident and without background. This supercilious attitude relegates me to the level of the commonplace. This is a species of the grievous error in which mankind cannot too long persist without peril. For, the wise G. K. Chesterton observed, “We are perishing for want of wonder, not for want of wonders.”

I, Pencil, simple though I appear to be, merit your wonder and awe, a claim I shall attempt to prove. In fact, if you can understand me—no, that’s too much to ask of anyone—if you can become aware of the miraculousness which I symbolize, you can help save the freedom mankind is so unhappily losing. I have a profound lesson to teach. And I can teach this lesson better than can an automobile or an airplane or a mechanical dishwasher because—well, because I am seemingly so simple.

Simple? Yet, not a single person on the face of this earth knows how to make me. This sounds fantastic, doesn’t it? Especially when it is realized that there are about one and one-half billion of my kind produced in the U.S.A. each year.

Pick me up and look me over. What do you see? Not much meets the eye—there’s some wood, lacquer, the printed labeling, graphite lead, a bit of metal, and an eraser.

**Innumerable Antecedents**

Just as you cannot trace your family tree back very far, so is it impossible for me to name and explain all my antecedents. But I would like to suggest enough of them to impress upon you the richness and complexity of my background.

My family tree begins with what in fact is a tree,
a cedar of straight grain that grows in Northern California and Oregon. Now contemplate all the saws and trucks and rope and the countless other gear used in harvesting and carting the cedar logs to the railroad siding. Think of all the persons and the numberless skills that went into their fabrication: the mining of ore, the making of steel and its refinement into saws, axes, motors; the growing of hemp and bringing it through all the stages to heavy and strong rope; the logging camps with their beds and mess halls, the cookery and the raising of all the foods. Why, untold thousands of persons had a hand in every cup of coffee the loggers drink!

The logs are shipped to a mill in San Leandro, California. Can you imagine the individuals who make flat cars and rails and railroad engines and who construct and install the communication systems incidental thereto? These legions are among my antecedents.

Consider the millwork in San Leandro. The cedar logs are cut into small, pencil-length slats less than one-fourth of an inch in thickness. These are kiln dried and then tinted for the same reason women put rouge on their faces. People prefer that I look pretty, not a pallid white. The slats are waxed and kiln dried again. How many skills went into the making of the tint and the kilns, into supplying the heat, the light and power, the belts, motors, and all the other things a mill requires? Sweepers in the mill among my ancestors?

Yes, and included are the men who poured the concrete for the dam of a Pacific Gas & Electric Company hydroplant which supplies the mill’s power!

Don’t overlook the ancestors present and distant who have a hand in transporting sixty carloads of slats across the nation.

Once in the pencil factory—$4,000,000 in machinery and building, all capital accumulated by thrifty and saving parents of mine—each slat is given eight grooves by a complex machine, after which another machine lays leads in every other slat, applies glue, and places another slat atop—a lead sandwich, so to speak. Seven brothers and I are mechanically carved from this “wood-clinched” sandwich.

My “lead” itself—it contains no lead at all—is complex. The graphite is mined in Ceylon. Consider these miners and those who make their many tools and the makers of the paper sacks in which the graphite is shipped and those who make the string that ties the sacks and those who put them aboard ships and those who make the ships. Even the lighthouse keepers along the way assisted in my birth—and the harbor pilots.

The graphite is mixed with clay from Mississippi in which ammonium hydroxide is used in the refining process. Then wetting agents are added such as sulfonated tallow—animal fats chemically reacted with sulfuric acid. After passing through numerous machines, the mixture finally appears as endless extrusions—as from a sausage grinder-cut to size, dried, and baked for several hours at 1,850 degrees Fahrenheit. To increase their strength and smoothness the leads are then treated with a hot mixture which includes candelilla wax from Mexico, paraffin wax, and hydrogenated natural fats.

My cedar receives six coats of lacquer. Do you know all the ingredients of lacquer? Who would think that the growers of castor beans and the refiners of castor oil are a part of it? They are. Why, even the processes by which the lacquer is made a beautiful yellow involve the skills of more persons than one can enumerate!

Observe the labeling. That’s a film formed by applying heat to carbon black mixed with resins. How do you make resins and what, pray, is carbon black?
My bit of metal—the ferrule—is brass. Think of all the persons who mine zinc and copper and those who have the skills to make shiny sheet brass from these products of nature. Those black rings on my ferrule are black nickel. What is black nickel and how is it applied? The complete story of why the center of my ferrule has no black nickel on it would take pages to explain.

Then there’s my crowning glory, inelegantly referred to in the trade as “the plug,” the part man uses to erase the errors he makes with me. An ingredient called “factice” is what does the erasing. It is a rubber-like product made by reacting rape-seed oil from the Dutch East Indies with sulfur chloride. Rubber, contrary to the common notion, is only for binding purposes. Then, too, there are numerous vulcanizing and accelerating agents. The pumice comes from Italy; and the pigment which gives “the plug” its color is cadmium sulfide.

No One Knows

Does anyone wish to challenge my earlier assertion that no single person on the face of this earth knows how to make me?

Actually, millions of human beings have had a hand in my creation, no one of whom even knows more than a very few of the others. Now, you may say that I go too far in relating the picker of a coffee berry in far off Brazil and food growers elsewhere to my creation; that this is an extreme position. I shall stand by my claim. There isn’t a single person in all these millions, including the president of the pencil company, who contributes more than a tiny, infinitesimal bit of know-how. From the standpoint of know-how the only difference between the miner of graphite in Ceylon and the logger in Oregon is in the type of know-how. Neither the miner nor the logger can be dispensed with, any more than can the chemist at the factory or the worker in the oil field—paraffin being a by-product of petroleum.

Here is an astounding fact: Neither the worker in the oil field nor the chemist nor the digger of graphite or clay nor any who mans or makes the ships or trains or trucks nor the one who runs the machine that does the knurling on my bit of metal nor the president of the company performs his singular task because he wants me. Each one wants me less, perhaps, than does a child in the first grade. Indeed, there are some among this vast multitude who never saw a pencil nor would they know how to use one. Their motivation is other than me. Perhaps it is something like this: Each of these millions sees that he can thus exchange his tiny know-how for the goods and services he needs or wants. I may or may not be among these items.

No Master Mind

There is a fact still more astounding: the absence of a master mind, of anyone dictating or forcibly directing these countless actions which bring me into being. No trace of such a person can be found. Instead, we find the Invisible Hand at work. This is the mystery to which I earlier referred.

It has been said that “only God can make a tree.” Why do we agree with this? Isn’t it because we realize that we ourselves could not make one? Indeed, can we even describe a tree? We cannot, except in superficial terms. We can say, for instance, that a certain molecular configuration manifests itself as a tree. But what mind is there among men that could even record, let alone direct, the constant changes in molecules that transpire in the life span of a tree? Such a feat is utterly unthinkable!

I, Pencil, am a complex combination of miracles: a tree, zinc, copper, graphite, and so on. But to these miracles which manifest themselves in Nature an even more extraordinary miracle has been added: the configuration of creative human energies—millions of tiny know-hows.
configuring naturally and spontaneously in response to human necessity and desire in the absence of any human master-minding! Since only God can make a tree, I insist that only God could make me. Man can no more direct these millions of know-hows to bring me into being than he can put molecules together to create a tree.

The above is what I meant when writing, “If you can become aware of the miraculousness which I symbolize, you can help save the freedom mankind is so unhappily losing.” For, if one is aware that these know-hows will naturally, yes, automatically, arrange themselves into creative and productive patterns in response to human necessity and demand—that is, in the absence of governmental or any other coercive masterminding—then one will possess an absolutely essential ingredient for freedom: a faith in free people. Freedom is impossible without this faith.

Once government has had a monopoly of a creative activity such, for instance, as the delivery of the mails, most individuals will believe that the mails could not be efficiently delivered by men acting freely. And here is the reason: Each one acknowledges that he himself doesn’t know how to do all the things incident to mail delivery. He also recognizes that no other individual could do it. These assumptions are correct. No individual possesses enough know-how to perform a nation’s mail delivery any more than any individual possesses enough know-how to make a pencil. Now, in the absence of faith in free people—in the unawareness that millions of tiny know-hows would naturally and miraculously form and cooperate to satisfy this necessity—the individual cannot help but reach the erroneous conclusion that mail can be delivered only by governmental “master-minding”.

Testimony Galore

If I, Pencil, were the only item that could offer testimony on what men and women can accomplish when free to try, then those with little faith would have a fair case. However, there is testimony galore; it’s all about us and on every hand. Mail delivery is exceedingly simple when compared, for instance, to the making of an automobile or a calculating machine or a grain combine or a milling machine or to tens of thousands of other things. Delivery? Why, in this area where men have been left free to try, they deliver the human voice around the world in less than one second; they deliver an event visually and in motion to any person’s home when it is happening; they deliver 150 passengers from Seattle to Baltimore in less than four hours; they deliver gas from Texas to one’s range or furnace in New York at unbelievably low rates and without subsidy; they deliver each four pounds of oil from the Persian Gulf to our Eastern Seaboard—halfway around the world—for less money than the government charges for delivering a one-ounce letter across the street!

The lesson I have to teach is this: Leave all creative energies uninhibited. Merely organize society to act in harmony with this lesson. Let society’s legal apparatus remove all obstacles the best it can. Permit these creative know-hows freely to flow. Have faith that free men and women will respond to the Invisible Hand. This faith will be confirmed. I, Pencil, seemingly simple though I am, offer the miracle of my creation as testimony that this is a practical faith, as practical as the sun, the rain, a cedar tree, the good earth.

My official name is “Mongol 482.” My many ingredients are assembled, fabricated, and finished by Eberhard Faber Pencil Company.
Handout E: *I, Pencil* Essays

**Directions:** Choose ONE of the three prompts below and write a well-constructed, five paragraph essay that thoroughly addresses the question. An ideal essay contains the following:

- A well-developed, analytical thesis.
- Three distinguishable topic sentences, each of which provides a clearly distinguished, new argumentative point that directly address the question.
- Three paragraphs that support the topic sentences with paraphrased evidence derived from the article.
- A conclusion that provides a thorough, analytical summary of the arguments.

**Prompts**

1. Compare and contrast: The article concludes with the phrase, “Leave all creative energies uninhibited.”
   a. What does this mean?
   b. Why should one not limit or regulate “creative energies”?
   c. What are some potential reasons why this concept might be wrong?
   d. What implications does this have for the relationship between a free market and human freedom?

2. Describe the part each of the following plays in the “life” of a pencil. Do they each ascribe the same value to the pencil? How do the things they individually value affect why they choose to play a part in the making of the pencil?
   a. loggers
   b. graphite or zinc miners
   c. picker of coffee berries
   d. president of the pencil company
   e. first-grade child
3. In his work *The Wealth of Nations* (1776), Scottish philosopher Adam Smith stated:

   Every individual... neither intends to promote the public interest, nor knows how much he is promoting it... he intends only his own security; and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. (Book IV, Chapter II.)

   a. What does Smith mean by an “invisible hand”?

   b. Detail in three separate paragraphs how *I, Pencil* demonstrates the concept of the “Invisible Hand” in action.

4. Prices play a powerful role in distributing resources, although there is no single person or group that is managing them. Using *I, Pencil*, explain how prices distribute goods and services across the world with no central authority or planner. Consider the following:

   a. What do economists mean when they state that prices steer to where they are most needed? How does this occur?

   b. If the above is true, why is it usually dangerous artificially to set a price for a market? What effects does price setting have and why?

   c. Why would government or other entities “setting” a price be destructive? Explain.
Handout A: Excerpts from the Constitution of the Union of Soviet Socialist Republics (1936)

**Background:** The Soviet Union (1922-1991) was the first modern historical experiment in establishing a pure command economy in a country. After almost 70 years, after increasingly failing economic performance, the Soviet empire disintegrated on December 25, 1991.

Below are the opening articles of the Constitution of the Union of Soviet Socialist Republics (1936).

**Directions:**

1. Divide into two groups. One will analyze the Soviet Constitution; the other will examine the United States Constitution.
2. Your group will carefully read the attached excerpts from the 1936 Constitution of the Soviet Union.
3. As a group, answer the Questions to Consider below.
4. When complete, compare your answers with the other group and then fill out the chart on Handout D together.
5. Finally, answer the concluding questions on a separate sheet of paper. Answer each question in well-written, well-organized paragraphs.
6. Be prepared to share your group’s answers with the class.

**Questions to Consider:**

When reading these constitutional articles, consider the following:

1. What is the significance of the fact that the Soviet Constitution begins with articles directly related to the economy?
2. In what ways was the state to be involved in the economy?
3. What was the role of private property in the Soviet state?
4. What elements of a command economy are included in the Soviet Constitution?
5. What elements of a market economy are evident in the Soviet Constitution, if any?
Excerpts from the Constitution of the Union of Soviet Socialist Republics (1936)

ARTICLE 1. The Union of Soviet Socialist Republics is a socialist state of workers and peasants.

ARTICLE 4. The socialist system of economy and the socialist ownership of the means and instruments of production firmly established as a result of the abolition of the capitalist system of economy, the abrogation of private ownership of the means and instruments of production and the abolition of the exploitation of man by man, constitute the economic foundation of the U.S.S.R.

ARTICLE 5. Socialist property in the U.S.S.R. exists either in the form of state property (the possession of the whole people), or in the form of cooperative and collective-farm property (property of a collective farm or property of a cooperative association).

ARTICLE 6. The land, its natural deposits, waters, forests, mills, factories, mines, rail, water and air transport, banks, post, telegraph and telephones, large state-organized agricultural enterprises...as well as municipal enterprises and the bulk of the dwelling houses in the cities and industrial localities, are state property, that is, belong to the whole people.

ARTICLE 7. Public enterprises in collective farms and cooperative organizations, with their livestock and implements, the products of the collective farms and cooperative organizations, as well as their common buildings, constitute the common socialist property of the collective farms and cooperative organizations. In addition to its basic income from the public collective-farm enterprise, every household in a collective farm has for its personal use a small plot of land attached to the dwelling and, as its personal property, a subsidiary establishment on the plot, a dwelling house, livestock, poultry and minor agricultural implements in accordance with the statutes of the agricultural artel.

ARTICLE 9. Alongside the socialist system of economy, which is the predominant form of economy in the U.S.S.R., the law permits the small private economy of individual peasants and handicraftsman based on their personal labor and precluding the exploitation of the labor of others.

ARTICLE 10. The right of citizens to personal ownership of their incomes from work and of their savings, of their dwelling houses and subsidiary household economy, their household furniture...
and utensils and articles of personal use and convenience, as well as the right of inheritance of personal property of citizens, is protected by law.

ARTICLE 11. The economic life of the U.S.S.R. is determined and directed by the state national economic plan with the aim of increasing the public wealth, of steadily improving the material conditions of the working people and raising their cultural level, of consolidating the independence of the U.S.S.R. and strengthening its defensive capacity.

ARTICLE 12. In the U.S.S.R. work is a duty and a matter of honor for every able-bodied citizen, in accordance with the principle: “He who does not work, neither shall he eat.” The principle applied in the U.S.S.R. is that of socialism: “From each according to his ability, to each according to his work.”

Source: http://www.departments.bucknell.edu/russian/const/36cons01.html

What workers earn is their property. They may also own some minor personal articles. This is protected by law.

The state controls economic activity through its central economic plan. The purpose of the economy is improving the material conditions of working and in strengthening the state.

Work is a duty, not a choice.
Handout B: Economics-Related Clauses in the U.S. Constitution (1787)

Background: Written in 1787 in the midst of the Enlightenment and soon after publication of Adam Smith’s The Wealth of Nations, the United States Constitution is a historic cornerstone of liberty, including economic liberty. Quite significantly, the US Constitution, a document specifically designed to limit the powers of government, addresses economic issues in very few clauses and often, treats them peripherally. Just over 100 years from the US Constitution’s signing, the United States had become the world’s largest and most dynamic economy. By 1991, it was the world’s sole remaining superpower and is still the world’s mightiest and most dynamic economy.

Questions to Consider:
When reading these constitutional clauses, consider the following:

1. What is the significance of the fact that the U.S. Constitution has so few articles directly related to economics (consider the Founders’ original objective for the Constitution)?

2. By 1994, much of Europe created a free trade (no taxes on internal trade) area. The United States accomplished this similar unification between the states in 1787. What role did the Commerce Clause play in this, and why was it so important to the United States’ economic development?

3. What is the role of the U.S. Constitution in creating limited government powers over the economy? Why might the Founders have written it this way?
4. How do the economic systems and individual freedoms of the United States and the Soviet Union differ?

5. How did the Founders defend the rights of private property and personal ownership? Why did they do so?

6. Can you have freedom if someone else tells you how to spend your time?

**Excerpts from the U.S. Constitution**

**The Commerce Clause**

Article 1, Section 8 states that Congress shall have the power “To regulate commerce with foreign nations, and among the several states, and with the Indian tribes...”

The federal government regulated commerce in order to simplify and facilitate trade with foreign countries, among the states, and with Native Americans.

**The Coinage Clauses**

Article I, Section 8 states that Congress shall have the power “To coin Money, regulate the value thereof...” and “To provide for the Punishment of counterfeiting the Securities and current Coin of the United States.”

Article I, Section 10 gives Congress the power exclusively to coin money by stating that “No State shall...coin Money.”

The power to coin money was to facilitate trade among the states. A single, universally-acceptable, currency would make it much easier to trade among states.

**The Copyright Clause**

Article I, Section 8 states that Congress shall have the power “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writing and Discoveries.”

Copyright law enables artists to keep property rights over their works for a certain time. The Founders realized that this was a necessary incentive to encouraging innovation.

**The Contract Clauses**

Article I, Section 9 states, “No Bill of Attainder or ex post facto Law shall be passed.”

Article I, Section 10 states, “No state shall...pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligations of Contracts.”

These clauses ensure that the state may not make contracts.

**The Export Clauses**

Article I, Section 9 states, “No Tax or Duty shall be laid on Articles exported from any State.”

These are the key clauses that supported the world’s first modern
Article I, Section 10 states, “No State shall without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports.”

The Searches and Seizures Clause
Amendment IV states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.”

Due Process of Law Clauses
Amendment V states, “No person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

free trade zone and lead to the incredibly rapid growth of the U.S. economy to become the world's most powerful.

This amendment makes it clear that the state may not violate private, personal property.

This amendment makes it clear that the state may not arbitrarily take private property and, if it must, it must compensate the owner appropriately.
### Handout C: Characteristics of Market and Command Economies Chart

**Directions:** Examine both the Soviet Constitution (1936) and the U.S. Constitution (1787). For each economic statement below, cite the article or clause from each constitution that applies to that statement in the appropriate box. If there is no article or clause that applies, leave the box blank. Finally, answer the concluding questions on a separate sheet of paper in well-written, well-organized paragraphs.

<table>
<thead>
<tr>
<th>Economic statement</th>
<th>Soviet Constitution</th>
<th>U.S. Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private property is individually owned.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private ownership is virtually eliminated. Almost everything is owned by the state or by ‘collectives.’</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private property rights are protected.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Almost all property belongs to the state.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The state’s role in economic activities is severely limited.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The state directs almost all economic activities.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The state facilitates trade among free individuals.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Economic activity exists to strengthen the state.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Concluding Questions

1. What evidence does the Soviet Constitution provide that establishing a command economy requires the subordination of individual desires, decision-making, and initiative?

2. Unlike the Soviet Constitution, the United States Constitution has relatively few clauses that directly relate to economics.
   a. What are the main themes of the clauses of the U.S. Constitution that relate to the economy? Why were these the dominant themes?
   b. What is significant about the fact that, while the Soviet Constitution dedicates the entirety of its first section to economic matters, the U.S. Constitution has few clauses that are directly economically related? Why do you believe the Founders did this?

3. Consider the relative merits of a command economy relative to a market economy.
   a. What are some potential strengths of a command economy relative to a market economy?
   b. What economic problems exist in a command economy that do not exist in a market economy? What characteristics of a market economy eliminate these problems?

4. In discussing socialism/communism’s attempts to create command economies, twentieth century economist Frederick Hayek stated, “Even the striving for equality by means of a directed economy can result only in an officially enforced inequality – an authoritarian determination of the status of each individual in the new hierarchical order.” Why did Hayek believe that the establishment of a command economy inevitably meant the loss of personal freedom?
Handout D: Characteristics of Command and Market Economies

A. Characteristics of a command economy

1. The state owns the factors of production (natural resources, capital goods)
2. Planners in the state direct the economy
3. Planners in the state determine what should be produced
4. Planners in the state determine how to produce
5. Planners in the state determine how goods and services are distributed
6. Economic activity is based on collective well-being and in strengthening the state
7. Individuals have little power to make decisions in buying, producing, and even in the nature of their work
8. Private property is either limited or non-existent
9. Work is obligatory and is on behalf of the state

B. Characteristics of a market economy

1. Individual buyers decide what should be produced
2. Individual sellers decide how to produce
3. There is no central planner directing economic activity
4. Emergent prices direct resources, goods, and services
5. Private property rights are strongly protected
6. People are free to buy and sell goods and services to satisfy their own desires
7. The state’s power is strongly limited
8. Human freedom in decision-making must be maximized
9. The potential for profit provides the incentive to create and to work
Handout A: Comparative Data

Per capita real GDP

This is a measure of the total dollar value of goods and services produced within a country in a year divided by that country's population, adjusted for inflation. Although it is a highly imperfect measure, it does give a general idea of the relative incomes of countries on a per-person basis.


Real per capital GDP in US$/international rank (1=best)

Chile: $19,100/74
China: $9,800/120
Cuba: $10,200/117
Korea, North: $1,800/197
Korea, South: $33,200/42
Mauritius: $16,100/86
Nigeria: $2,800/180
Singapore: $62,400/7
Switzerland: $46,000/15
USA: $52,800/14

Index of Economic Freedom ranking

This is an index published annually by the Heritage Foundation and the Wall Street Journal newspaper that attempts to demonstrate the link between human freedoms in several areas and national prosperity. Using statistics from several respected international organizations, the index rates states on 10 broad factors of economic freedom, such as business freedom, property rights, and freedom from corruption.

Source: http://www.heritage.org/index/ranking

Economic freedom score (higher=freer)/international rank (1=best)

Chile: 78.7/7
China: 52.5/137
Cuba: 28.7/177
Korea, North: 1.0/178
Korea, South: 71.2/31
Mauritius: 76.5/8
Nigeria: 54.3/129
Singapore: 89.4/2
Switzerland: 81.6/4
USA: 75.5/12

Human Development Index

*The Human Development Index, published by the United Nations Development Programme, is a composite measure of state-level achievement in three broad areas: health, income, and education. Its authors claim that the analysis is intellectually independent and empirically grounded.*

Source: [https://data.undp.org/dataset/Table-1-Human-Development-Index-and-its-components/wxub-qc5k](https://data.undp.org/dataset/Table-1-Human-Development-Index-and-its-components/wxub-qc5k)

Human development index score (1.0 = highest)/international ranking
Chile: 0.819/40
China: 0.690/101
Cuba: 0.78/59
Korea, North: No ranking
Korea, South: 0.909/12
Mauritius: 0.737/80
Nigeria: 0.471/153
Singapore: 0.895/18
Switzerland: 0.913/9
USA: 0.937/3

Global Competitiveness Report index

*Published annually by the World Economic Forum, the Global Competitiveness Report uses 110 variables to “assess the ability of countries to provide high levels of prosperity to their citizens. This in turn depends on how productively a country uses available resources.”*


Score (1-7. 7 = highest)/international ranking
Chile: 4.61/34
Handout A: Page 3

China: 4.84/29
Cuba: No ranking
Korea, North: No ranking
Korea, South: 5.01/25
Mauritius: 4.45/45
Nigeria: 3.57/120
Singapore: 5.51/2
Switzerland: 5.67/1
USA: 5.48/5

**Freedom in the World Index**

“Freedom in the World” is Freedom House’s annual report that attempts to quantify the state of political freedom and civil liberties around the world.


Score (1-7. 1=Most free)

Chile: 1.0/7.0; free
China: 6.7/7.0; not free
Cuba: 6.5/7.0; not free
Korea, North: 7.0/7.0/not free
Korea, South: 1.5/free
Mauritius: 1.5/7.0; free
Nigeria: 4.5/7.0; partly free
Singapore: 4.0/partly free
Switzerland: 1.0/7.0; free
USA: 1.0/7.0; free

**Worldwide Governance Indicators: Rule of Law**

The Worldwide Governance Indicators are the World Bank’s attempts to quantify and analyze six broad measurements of governance. The data below examine the rule of law; that is, the fair, functioning, and universal application of “just” legal codes in a society.

Handout A: Page 4

Score (-2.5 (lowest/worst) to 2.5 (highest/best)). Percentile is world ranking, with 99% being the top.

Chile: 1.37/88.15 percentile
China: -0.49/38.36 percentile
Cuba: -0.64/32.23 percentile
Korea, North: -1.25/9.00 percentile
Korea, South: 0.97/79.62 percentile
Mauritius: 0.94/78.20 percentile
Nigeria: Score -1.18/10.43 percentile
Singapore: 1.77/95.73 percentile
Switzerland: 1.81/96.68 percentile
USA: Score 1.60/91.47 percentile

Total natural resources rents (% of GDP) – Country ranking

This represents the total percentage of national earnings from oil, natural gas, coal, minerals, and timber. The ranking is the world ranking of this percentage of reliance on resource wealth.

Source: http://www.indexmundi.com/facts/indicators/NY.GDP.TOTL.RT.ZS/rankings

Chile: 19.16%/34
China: 9.09%/57
Cuba: 5.26%/74
Korea, North: No data
Korea, South: 0.07%/159
Mauritius: 0.01%/169
Nigeria: Score 35.77%/19
Singapore: 0.00%/171
Switzerland: 0.02%/165
USA: 1.73%/109
Handout B: Summative Questions

Directions: Answer the following questions in complete, well-written sentences. When possible, use evidence and data from the country comparison exercise you just completed.

1. What similarities are there among the countries that rank near the top in per capita GDP? Near the bottom?

2. What countries are in the top three in GDP, human development, and freedom in the world? In the bottom? Looking at all of the data and indexes, what characteristics do they share in their respective groups? Provide specific evidence from the data. Where does the United States fall in these categories? Why?

3. Many believe that countries that possess large amounts of natural resources are also the wealthiest. Analyzing the data, confirm or refute this argument. Provide specific evidence from the data.

4. From the data, what is the correlative relationship between the rule of law and economic prosperity? Why might the strong rule of law be an important part of prosperity? Provide specific evidence from the data. How does the United States protect prosperity through rule of law?

5. What is the correlative relationship between economic and political freedom and economic prosperity? In what ways would economic and political freedom promote economic prosperity? Provide specific evidence from the data. How does the United States protect economic and political freedom?
**Handout A: Book Stand Group Task Sheets**

**Teacher Directions:** Cut the following rectangles and pass them out face down to the various groups.

<table>
<thead>
<tr>
<th>Political and Economic Freedoms</th>
<th>Limited Political and Economic Freedoms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your team’s goal is to build a book stand using the supplied pipe cleaners.</td>
<td>Your team’s goal is to build a book stand using the supplied pipe cleaners. To help with organizing the team, read the following instructions.</td>
</tr>
<tr>
<td></td>
<td>The tallest member of the team is the absolute dictator. The rest of the team are his/her subjects and must listen to the dictator. If any subject does not listen to the dictator, the dictator will banish that person from the team and that person will receive an “F” grade.</td>
</tr>
<tr>
<td></td>
<td>The dictator would like a better educated population to compete with his/her neighboring countries. He/she has a plan for a book stand to hold various books while the population reads. Listen to how the dictator wants to accomplish building the book stand.</td>
</tr>
<tr>
<td></td>
<td>Your team’s goal is to build a book stand using the supplied pipe cleaners. To help with organizing the team, read the following instructions.</td>
</tr>
<tr>
<td></td>
<td>The shortest member of the team is “the government.” The government wants the best and safest book stand. The regulations are:</td>
</tr>
<tr>
<td></td>
<td>1. Have no sharp pipe cleaners poking out of the stand.</td>
</tr>
<tr>
<td></td>
<td>2. The lowest angle of the book stand cannot be less than 30 degrees.</td>
</tr>
<tr>
<td></td>
<td>3. The highest angle of the book stand cannot be more than 60 degrees.</td>
</tr>
<tr>
<td></td>
<td>4. There needs to be a mechanism that holds the pages down on the left side and on the right side.</td>
</tr>
<tr>
<td></td>
<td>The government will enforce that all of the above regulations are being meet.</td>
</tr>
<tr>
<td>Political and Economic Freedoms</td>
<td>Limited Political and Economic Freedoms</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>Your team’s goal is to build a book stand using the supplied pipe cleaners.</td>
<td>Your team’s goal is to build a book stand using the supplied pipe cleaners. To help with organizing the team, read the following instructions.</td>
</tr>
<tr>
<td>Decide who the <em>most righteous</em> person of the group is and they will be the leader of the group. The <em>most righteous</em> leader wants a book stand to hold their book. Other members of the group will listen to the <em>most righteous</em> leader as to how the book stand should be constructed.</td>
<td></td>
</tr>
<tr>
<td>Your team’s goal is to build a book stand using the supplied pipe cleaners.</td>
<td>Your team’s goal is to build a book stand using the supplied pipe cleaners. To help with organizing the team, read the following instructions.</td>
</tr>
<tr>
<td>The team member with the longest hair is the absolute dictator. The rest of the team are his/her subjects and must listen to the dictator. If any subject does not listen to the dictator, the dictator will banish that person from the team and that person will receive an “F” grade.</td>
<td>The dictator would like a better educated population to compete with his/her neighboring countries. He/she has a plan for a book stand to hold various books while the population reads. Listen to how the dictator wants to accomplish building the book stand.</td>
</tr>
</tbody>
</table>
Directions: Record the results from each group below and answer the questions at the bottom of the page.

<table>
<thead>
<tr>
<th>Political and Economic Freedom to Accomplish the Task</th>
<th>Limited Political and Economic Freedom to Accomplish the Task</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Group 1</td>
<td>Group 1</td>
</tr>
<tr>
<td>Did they make a useable book stand?</td>
<td>Did they make a useable book stand?</td>
</tr>
<tr>
<td>How long could their book stand hold?</td>
<td>How long could their book stand hold?</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Group 2</td>
<td>Group 2</td>
</tr>
<tr>
<td>Did they make a useable book stand?</td>
<td>Did they make a useable book stand?</td>
</tr>
<tr>
<td>How long could their book stand hold?</td>
<td>How long could their book stand hold?</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Group 3</td>
<td>Group 3</td>
</tr>
<tr>
<td>Did they make a useable book stand?</td>
<td>Did they make a useable book stand?</td>
</tr>
<tr>
<td>How long could their book stand hold?</td>
<td>How long could their book stand hold?</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Group 4</td>
<td>Group 4</td>
</tr>
<tr>
<td>Did they make a useable book stand?</td>
<td>Did they make a useable book stand?</td>
</tr>
<tr>
<td>How long could their book stand hold?</td>
<td>How long could their book stand hold?</td>
</tr>
<tr>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
1. In general, which groups accomplished the task given the time limit?

2. What were some of the characteristics of the “Political and Economic Freedom” teams? How did the group decide to build the book stand? Who were the leaders? What slowed the group down or sped the group up?

3. What were some of the characteristics of the “Limited Political and Economic Freedom” teams? What slowed the group down or sped the group up?
# Handout C: Bridge Group Tasks Sheet

**Teacher Directions:** Cut the following rectangles and pass them out face down to the various groups.

<table>
<thead>
<tr>
<th>Political and Economic Freedoms</th>
<th>Limited Political and Economic Freedoms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your team’s goal is to build a bridge over the paper, representing water.</td>
<td>Your team’s goal is to build a bridge using nothing but marshmallows and toothpicks. To help with organizing the team, read the following instructions.</td>
</tr>
<tr>
<td></td>
<td>The tallest member of the team is the absolute dictator. The rest of the team are his/her subjects and must listen to the dictator. If any subject does not listen to the dictator, the dictator will banish that person from the team and that person will receive an “F” grade.</td>
</tr>
<tr>
<td></td>
<td>The dictator would like better infrastructure to get the country’s goods to market. Listen to the dictator’s instructions on how to accomplish making the bridge.</td>
</tr>
</tbody>
</table>

<p>| Your team’s goal is to build a bridge over the paper, representing water. | Your team’s goal is to build a bridge using nothing but marshmallows and toothpicks. To help with organizing the team read the following instructions. |
| | The shortest member of the team is “the government”. The government wants the best and safest bridge. The regulations are |
| | 1. Have no sharp toothpicks poking out of the marshmallows. |
| | 2. The pillars must be right angles (90 degrees) to the foundation (table). |
| | 3. Each pillar base (where the pillar touches the table) must be at least 3 marshmallows. |
| | 4. The bridge must be at least 8 inches high but no higher than 12 inches. |
| | The government will enforce that all of the above regulations are being met. |</p>
<table>
<thead>
<tr>
<th>Political and Economic Freedoms</th>
<th>Limited Political and Economic Freedoms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your team’s goal is to build a bridge over the paper, representing water.</td>
<td>Your team’s goal is to build a bridge using nothing but marshmallows and toothpicks. To help with organizing the team, read the following instructions.</td>
</tr>
<tr>
<td>Decide who the most righteous person of the group is and they will be the leader of the group. The most righteous leader wants a bridge to help bring their goods to market. Other members of the group will listen to the most righteous leader as to how the bridge should be constructed.</td>
<td>The team member with the longest hair is the absolute dictator. The rest of the team are his/her subjects and must listen to the dictator. If any subject does not listen to the dictator, the dictator will banish that person from the team and that person will receive an “F” grade.</td>
</tr>
<tr>
<td>The dictator would like better infrastructure to get the country’s goods to market. Listen to the dictators instructions on how to accomplish making the bridge.</td>
<td></td>
</tr>
</tbody>
</table>

| Your team’s goal is to build a bridge over the paper, representing water. | Your team’s goal is to build a bridge using nothing but marshmallows and toothpicks. To help with organizing the team, read the following instructions. |

The team member with the longest hair is the absolute dictator. The rest of the team are his/her subjects and must listen to the dictator. If any subject does not listen to the dictator, the dictator will banish that person from the team and that person will receive an “F” grade.

The dictator would like better infrastructure to get the country’s goods to market. Listen to the dictators instructions on how to accomplish making the bridge.
Handout D: Bridge Results

**Directions:** Record the results from each group below and answer the questions at the bottom of the page.

<table>
<thead>
<tr>
<th>Political and Economic Freedom to Accomplish the Task</th>
<th>Limited Political and Economic Freedom to Accomplish the Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 1</td>
<td>Group 1</td>
</tr>
<tr>
<td>Did they make a useable bridge?</td>
<td>Did they make a useable bridge?</td>
</tr>
<tr>
<td>How long could their bridge hold?</td>
<td>How long could their bridge hold?</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Group 2</td>
<td>Group 2</td>
</tr>
<tr>
<td>Did they make a useable bridge?</td>
<td>Did they make a useable bridge?</td>
</tr>
<tr>
<td>How long could their bridge hold?</td>
<td>How long could their bridge hold?</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Group 3</td>
<td>Group 3</td>
</tr>
<tr>
<td>Did they make a useable bridge?</td>
<td>Did they make a useable bridge?</td>
</tr>
<tr>
<td>How long could their bridge hold?</td>
<td>How long could their bridge hold?</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Group 4</td>
<td>Group 4</td>
</tr>
<tr>
<td>Did they make a useable bridge?</td>
<td>Did they make a useable bridge?</td>
</tr>
<tr>
<td>How long could their bridge hold?</td>
<td>How long could their bridge hold?</td>
</tr>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>
Handout D: Page 2

1. In general, which groups accomplished the task given the time limit?

2. What were some of the characteristics of the “Political and Economic Freedom” teams? How did the group decide to build the bridge? Who were the leaders? What slowed the group down or sped the group up?

3. What were some of the characteristics of the “Limited Political and Economic Freedom” teams? What slowed the group down or sped the group up?
Handout E: Entrepreneurship Concluding Thoughts

Directions: After building the book stand and bridge, read the quotes below and answer the questions.

“The statesman who should attempt to direct private people in what manner they ought to employ their capitals, would not only load himself with a most unnecessary attention, but assume an authority which could safely be trusted, not only to no single person, but to no council or senate whatever, and which would nowhere be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it.” – Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*

1. When group members were participating with limited political and economic freedoms, did the leader “load himself with a most unnecessary attention”?

2. Do you agree or disagree and why with Adam Smith’s assessment that “no single person…no council or senate” can tell others how to best use their talents (“direct private people in what manner they ought to employ”).

“The man of system…is apt to be very wise in his own conceit; and is often so enamoured with the supposed beauty of his own ideal plan of government, that he cannot suffer the smallest diviation from any part of it…He seems to imagine that he can arrange the different members of a great society with as much ease as the hand arranges the different pieces upon a chess-board. He does not consider that in the great chess-board of human society, every single piece has a principle of motion of its own, altogether different from that which the legislature might choose to impress upon it.” – Adam Smith, *The Theory of Moral Sentiments*

Read the above quote and think back to when you were participating in the team when there was limited political and economic freedom.

1. If you were the dictator/leader, was the plan in your head “beautiful”?

2. If you were one of the dictator’s/leader’s subjects, did you feel that the leader thought his/her ideas were better than others?

3. If you were the dictator/leader, did you care about what others thought of you or your ideas? Did you feel that it was only necessary to tell others how to build and not necessary to address any other concerns?

4. If you were one of the dictator’s/leader’s subjects, did you feel that you had *other options* to building such as sabotaging the assignment or leader’s plans? Were there other “motions of its own” that the leader was not addressing?
“...the obvious and simple system of natural liberty establishes itself of its own accord. Every man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man, or order of men.” – Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*

Read the above quote and think back to when you were participating in the team when there was political and economic freedom.

1. **Was time spent on creating, “who was the leader”? Why or why not?**

2. **Did everyone participate? Why didn’t some people participate?**

3. **In the end, even though some people participated more than others, was the task/goal accomplished?**

4. **When filling out the task chart sheet and looking around to other groups, did you get a sense of “I/we have to beat them”? Was there a sense of competition with other groups? Why or why not?**

5. **What are some essential features (the “laws of justice” according to Adam Smith) that are necessary to promote entrepreneurship? What made accomplishing the task easier?**
Handout A: Graphing and Analyzing the Effects of Taxes

Directions: Review the examples and complete the questions throughout the text.

A tariff (or tax) is added to imported goods as it is administratively easy to tax goods as the ship is being unloaded. During the first century after the United States was founded, manufactured goods were generally imported as they were cheaper to produce in England or France than in the United States.

Furniture was an imported manufactured good. The price of others’ furniture (the World Price) will be less than the American manufactured price (Pd).

Looking at the above graph, Pd is the price of American manufactured furniture or domestic price for domestic furniture. Since the World Price is less than the domestic price, the Quantity consumed (Qc) will be greater than without imports. But American furniture manufactures will have a hard time competing at the World Price and thus American production of furniture decreases to QP. The difference between quantity consumed (Qc) and American production (QP) would be American imports.
Who is better off and who is worse off from trading?

The buyers of furniture would be better off as the price of furniture has decreased and people can afford to buy more furniture.

The American manufacturers of furniture are worse off because they find it harder to compete with foreign producers of furniture and therefore they supply the market with less American-made furniture.

If the United States added a tariff then the price of the good is increased.

Since the tariff only affects imported goods then the tax only increases the world price. Some people will chose not to pay the higher price and therefore the quantity consumed decreases to \((Q_{CT})\) the Quantity consumed after the tariff. American manufactures can better compete with these higher prices on imports and therefore they increase production to \((Q_{PT})\). Imports are going to decrease from \((Q_C - Q_P)\) to \((Q_{CT} - Q_{PT})\).

Who is better off and who is worse off from the addition of this tariff?

The American consumer of furniture is worse off as they pay a higher price. The foreign producers of furniture are worse off as they have to pay taxes on their exports to America and therefore they sell less.

The American producers of furniture are better off as they can compete more easily on price with foreign competitors. The government will also be better off as they will collect taxes. The tax revenue will be the blue box. However, because of the tax and the reduction of imports the
government will collect less revenue than expected as the tax “base” was reduced. (QPT – QCT) is less than (QC – QP).

After the passage of the Sixteenth Amendment and Introduction of the Income Tax.

When the United States implemented an income tax, it was mostly a tax on one’s labor. Since you have to work to earn money to live the supply and demand curves are slightly different.

Demand for labor roughly remains the same negatively-sloped line as before. However, since you have to work to earn money the supply of labor is more vertical. People will not reduce their hours much even when highly taxed because they need that income to pay their bills.

From the above graph, the amount of hours worked is largest when income or labor is not taxed (QL). As we have seen above, when a tax is added the costs are increased from WL to WT. However, what the employee actually takes home is much less, the wage after taxes (WAT). Thus you have two things happening, one is increased business costs measured from WL to WT, and the other is less take home pay measured from WL to WAT.

Who is better off and who is worse off from the addition of the tax?

The government is better off as they collect the tax revenue from WT – WAT multiplied by QLT.

The laborers are worse off as they take home less pay, now WAT instead of WL. The employers are worse off as they have to pay higher wages in the form of additional taxes and they receive less work, QL – QLT.
Handout B: Graphing Taxes

Directions: After completing Handout A: Graphing and Analyzing the Effects of Taxes, complete the exercises below.

1. Cheaper imports from Japan and Korea encourage the American government to add a tariff to cars.

Draw on the graph above what a tariff may look like in the marketplace. Identify the new price, as WPT, the new quantity consumed as QCT, the new domestic quantity produced as QPT, and shade in the new government tax revenue.

<table>
<thead>
<tr>
<th>Who benefits from the tariff?</th>
<th>Who does not benefit from the tariff?</th>
</tr>
</thead>
</table>

Cars in America

Price

Supply

World Price

Demand

Without Trade

Quantity

Qp

Q

Qc
2. Why does the United States have an advantage in making a good that does not have imports? Using a similar graph analyze the following example.

**Airplanes in America**

The quantity produced is now greater than the quantity consumed in the United States and the difference means that the United States has to export those extra airplanes.

**Would an American tariff affect exports?**

<table>
<thead>
<tr>
<th>Who benefits from an added tariff?</th>
<th>Who does not benefit from the tariff?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3. The government taxes labor through the FICA social security tax.

Draw on the graph above how the Social Security FICA tax will affect the marketplace. Label the new quantity of labor as QAT, the new wage with taxes as WT, the new take home pay as WAT, and shade in the new government revenue created. Hint: do not shift the line too much.

<table>
<thead>
<tr>
<th>Who benefits from this tax?</th>
<th>Who does not benefit from the tax?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
4. The government can also tax capital, as an economic term to mean savings or investments. Using the same analysis as before draw an added tax on capital and analyze who benefits and who loses.

Savings and Investments can travel much more easily than people and labor, therefore the supply of savings and investments is “flatter” than labor as people will seek to put their savings and investments in place that are taxed less.

Draw an added tax to savings and investment. Label the quantity as QT, the new interest with tax as IT, the take home interest as IAT, and shade in the government revenues.

<table>
<thead>
<tr>
<th>Who benefits from this tax?</th>
<th>Who does not benefit from the tax?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>
Handout C: Graphing and Analyzing the Effects of Regulations

Directions: Review the examples and complete the questions throughout the text.

Regulations will have a similar effect on the marketplace as taxes. Take for example American technology companies that would like to hire computer programmers.

If American technology companies could hire any computer programmer (American or non-American) then they would hire QF at the wage WF. This does not mean that skilled computer programmers would not need VISAs to enter the United States to work, only that the restrictions on the number of programmers allowed into the United States would be removed. Because there are restrictions in the number allowed into the United States, technology companies are forced to hire less people (QR) and they have to pay a higher wage to the people that they do hire (WR). Notice that this graph looks similar to the supply and demand of labor when analyzing taxes on income.
As with taxes, the market is reduced (less people hired) and there are winners and losers. The winners are the American computer programmers that are hired at the higher wages and the non-American computer programmers (65,000 of them). The losers are the companies that have to pay the higher wages, the companies that get less work done because less people are hired and the non-American computer programmers that did not win the lottery for the H-1B VISAs.

This regulation will also affect other markets. If skilled laborers cannot work in the United States, they will not be moving to the United States. Therefore, they will not pay an American landlord rent, won’t get haircuts, won’t go to restaurants, won’t vacation in the United States, won’t buy things at American stores or use American services (like a tax accountant to do their new income tax forms), nor will they pay any American income taxes.

There will also be unintended consequences of such regulations. If American companies can’t bring the worker to their place of business, then the company will outsource highly skilled and highly compensated employees. If enough talent is kept outside the United States, then the nation could lose the industry as it relocates somewhere else.
Now analyze the effects of regulations on migrant farmer workers. Farmer workers are less skilled than computer programmers and there are many unskilled workers so the supply of labor in this market will be slightly different.

Draw on the graph above how regulations that restriction farmer workers from America would affect the marketplace. Label the new line as “Supply Restricted”, label the new wage WR, the new quantity of labor hired as QR.

1. Who benefits from this regulation?
2. Who loses from the regulation?
3. What other consequences come from implementing this regulation?
Handout A: Is It Saving or Investing or Both?

**Directions:** Read through the following scenarios. Determine if each is saving, investing, or both and place a check mark in the appropriate column.

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Saving</th>
<th>Investing</th>
<th>Both</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Smith has $200 left over after he pays all of his bills for the month.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mr. Jones purchases a new drill press to make pens.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ms. Jackson puts her money into the General Electric (GE) stock; GE wants to build a new factory in France.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mr. Saver buys a used computer.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ford Motor Company has $1,000,000 in profits</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ford Motor Company retools a factory for the new F-150 model.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ms. Caregiver buys $10,000 worth of bonds that will be used for the building of a new hospital.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mr. Thrifty buys a new desk with his savings.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ms. Brown puts $800 per month into her 401(k) retirement plan.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ms. Windsor buys an apartment complex with her savings and plans to rent out individual units.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mr. Smithton keeps $600 in his house.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ms. Goldman keeps $9,000 in her bank account.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mr. Johnson sells his Apple stock and puts the money into his bank account.</td>
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</tbody>
</table>
Handout B: Loanable Funds Market

**Background:** Governmental policy often influences savings and investments. We last looked at the difference between saving and investment and as a review, savings is the money left over after bills have been paid. Investment is spending on items that will produce something in the future. From an economic graph point-of-view this can be shown in the “Loanable Funds Market.”

![Loanable Funds Market Diagram]

Anything that encourages people to save more will move the SAVINGS line to the right and will lower interest rates and increase the quantity of investments. If savings decrease, interest rates will increase and the quantity of investments will decrease.

Anything that encourages businesses or people to invest more will move the INVESTMENTS line to the right and will increase interest rates and investments. If investments decrease, interest rates and investments will decrease.
**Directions:** Given the following scenarios, determine if the government action affects saving or investing. Then write a sentence explaining what happens in the loanable funds market (interest rates increase/decrease and quantity of investments increase/decrease). The first scenario is completed for you.

<table>
<thead>
<tr>
<th>Action</th>
<th>Supply - Savings</th>
<th>Demand - Investing</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The government does not tax the first $17,500 saved for retirement.</td>
<td>Increase savings</td>
<td></td>
<td>Lower taxes on savings should encourage people to save more. This will lower interest rates and increase quantity invested.</td>
</tr>
<tr>
<td>The government allows businesses to write off investments as a business expense and therefore does not tax investments.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The government allows real estate companies to pass their profits onto investors so as not to “double-tax” corporate profits (lower taxes on investments).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The government will give up to $1,000 to poorer citizens when they contribute to their retirement plans.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The government doubles taxes on corporate profits and individual income from their personal investments.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The government gives a tax credit to people who buy hybrid cars.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The government increases taxes on corporate profits.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Action</td>
<td>Supply - Savings</td>
<td>Demand - Investing</td>
<td>Explanation</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>------------------</td>
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<td>-------------</td>
</tr>
<tr>
<td>The government increases taxes on savings.</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>The government gives a tax credit to businesses who invest in solar and wind energy.</td>
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</tbody>
</table>
Handout A: What Is Being Done?

**Directions:** Determine a philanthropic area of need in a community and what steps are being taken to fill that need. Then develop a plan of action about how you or your group could address that need.

Identified Area of Need: ____________________________________________________________

Community: ____________________________________________________________

<table>
<thead>
<tr>
<th>By Citizens</th>
<th>By Local Organizations</th>
<th>By Local/State Government</th>
<th>By National Government</th>
</tr>
</thead>
</table>

1. Why does more need to be done?

2. What may not be working well at the citizen, organization, local/state government, and national government levels?
<table>
<thead>
<tr>
<th>Your Plan to Address this Need</th>
</tr>
</thead>
<tbody>
<tr>
<td>What can you do in your personal life?</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>What can you do in relation to an organization?</td>
</tr>
</tbody>
</table>
Handout B: Setting Short-Term and Long Term Goals

**Directions:** Use the SMART (Specific, Measurable, Attainable, Relevant, Timely) goal charts to plan, analyze, and set your short- and long-term philanthropic goals. Write one short-term and one long-term philanthropic goal statement in the space provided.

### Short-Term Philanthropic Goals

<table>
<thead>
<tr>
<th>Goal (Specific)</th>
<th>Total Cost (Measurable)</th>
<th>Ways to Reach (Attainable)</th>
<th>Monthly Commitment (Relevant)</th>
<th>Term (Timely)</th>
</tr>
</thead>
<tbody>
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<td></td>
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</table>

**My Short-Term SMART philanthropic Goal Statement is:**

### Long-Term Philanthropic Goals

<table>
<thead>
<tr>
<th>Goal (Specific)</th>
<th>Total Cost (Measurable)</th>
<th>Ways to Reach (Attainable)</th>
<th>Monthly Commitment (Relevant)</th>
<th>Term (Timely)</th>
</tr>
</thead>
<tbody>
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<td></td>
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</tbody>
</table>

**My Long-Term SMART philanthropic Goal Statement is:**
Handout C: Reflection

**Directions:** Based on your understanding of economics and government, use the chart below to explain if or how each actor should be involved in philanthropy. Then answer the questions below.

<table>
<thead>
<tr>
<th></th>
<th>Private Citizens</th>
<th>Organizations</th>
<th>State/Local Government</th>
<th>National Government</th>
</tr>
</thead>
</table>

1. **What are the benefits to you or to the people receiving help when you are philanthropic?**
2. **When the government becomes involved, how does philanthropy change?**
Chapter II: The State of Nature

Sec. 4. TO understand political power right, and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.

Sec. 6. But though this be a state of liberty, yet it is not a state of license: though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another’s pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us, that may authorize us to destroy one another, as if we were made for one another’s uses, as the inferior ranks of creatures are for our’s. Every one, as he is bound to preserve himself, and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind, and may not, unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another.

Chapter V: Property

Sec. 27. Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labor of his body, and the work of his hands, may say, are properly his. Whosoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labor with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labor something annexed to it, that excludes the common right of other men: for this labor
being the unquestionable property of the laborer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.

Sec. 28. He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. No body can deny but the nourishment is his. I ask then, when did they begin to be his? when he digested? or when he eat? or when he boiled? or when he brought them home? or when he picked them up? and it is plain, if the first gathering made them not his, nothing else could. That labor put a distinction between them and common: that added something to them more than nature, the common mother of all, had done; and so they became his private right. And will any one say, he had no right to those acorns or apples, he thus appropriated, because he had not the consent of all mankind to make them his? Was it a robbery thus to assume to himself what belonged to all in common? If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him. We see in commons, which remain so by compact, that it is the taking any part of what is common, and removing it out of the state nature leaves it in, which begins the property; without which the common is of no use. So that, in effect, there was never the less left for others because of his enclosure for himself: for he that leaves as much as another can make use of, does as good as take nothing at all. No body could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst: and the case of land and water, where there is enough of both, is perfectly the same.

Sec. 32. But the chief matter of property being now not the fruits of the earth, and the beasts that subsist on it, but the earth itself; as that which takes in and carries with it all the rest; I think it is plain, that property in that too is acquired as the former. As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labor does, as it were, enclose it from the common. Nor will it invalidate his right, to say every body else has an equal title to it; and therefore he cannot appropriate, he cannot enclose, without the consent of all his fellow-commoners, all mankind. God, when he gave the world in common to all mankind, commanded man also to labor, and the penury of his condition required it of him. God and his reason commanded him to subdue the earth, i.e. improve it for the benefit of life, and therein lay out something upon it that was his own, his labor. He that in obedience to this command of God, subdued, tilled and sowed any part of it, thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him.

Sec. 33. Nor was this appropriation of any parcel of land, by improving it, any prejudice to any other man, since there was still enough, and as good left; and more than the yet unprovided could use. So that, in effect, there was never the less left for others because of his enclosure for himself: for he that leaves as much as another can make use of, does as good as take nothing at all. No body could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst: and the case of land and water, where there is enough of both, is perfectly the same.

Sec. 50. But since gold and silver, being little useful to the life of man in proportion to food, raiment, and carriage, has its value only from the consent of men, whereof labor yet makes, in great part, the measure, it is plain, that men
have agreed to a disproportionate and unequal possession of the earth, they having, by a tacit and voluntary consent, found out, a way how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus gold and silver, which may be hoarded up without injury to any one; these metals not spoiling or decaying in the hands of the possessor. This partage of things in an inequality of private possessions, men have made practicable out of the bounds of society, and without compact, only by putting a value on gold and silver, and tacitly agreeing in the use of money: for in governments, the laws regulate the right of property, and the possession of land is determined by positive constitutions.
This term in its particular application means “that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual.”

In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and which leaves to every one else the like advantage.

In the former sense, a man’s land, or merchandize, or money is called his property.

In the latter sense, a man has a property in his opinions and the free communication of them.

He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them.

He has a property very dear to him in the safety and liberty of his person.

He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.

In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.

Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions.

Where there is an excess of liberty, the effect is the same, tho’ from an opposite cause.

Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own.

According to this standard of merit, the praise of affording a just securing to property, should be sparingly bestowed on a government which, however scrupulously guarding the possessions of individuals, does not protect them in the enjoyment and communication of their opinions, in which they have an equal, and in the estimation of some, a more valuable property.

More sparingly should this praise be allowed to a government, where a man’s religious rights are violated by penalties, or fettered by tests, or taxed by a hierarchy. Conscience is the most sacred of all property; other property depending in part on positive law, the exercise of that, being a natural and unalienable right. To guard a man’s house as his castle, to pay public and enforce private debts with the most exact faith, can give no title to invade a man’s conscience which is more sacred than his castle, or to withhold from it that debt of protection, for which the public faith is pledged, by the very nature and original conditions of the social pact.

That is not a just government, nor is property secure under it, where the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of citizens for the service of the rest. A magistrate issuing his warrants to a press gang, would be in his proper functions in Turkey or Indostan, under appellations proverbial of the most compleat despotism.
That is not a just government, nor is property secure under it, where arbitrary restrictions, exemptions, and monopolies deny to part of its citizens that free use of their faculties, and free choice of their occupations, which not only constitute their property in the general sense of the word; but are the means of acquiring property strictly so called. What must be the spirit of legislation where a manufacturer of linen cloth is forbidden to bury his own child in a linen shroud, in order to favour his neighbour who manufactures woolen cloth; where the manufacturer and wearer of woolen cloth are again forbidden the oeconomical use of buttons of that material, in favor of the manufacturer of buttons of other materials!

A just security to property is not afforded by that government, under which unequal taxes oppress one species of property and reward another species: where arbitrary taxes invade the domestic sanctuaries of the rich, and excessive taxes grind the faces of the poor; where the keenness and competitions of want are deemed an insufficient spur to labor, and taxes are again applied, by an unfeeling policy, as another spur; in violation of that sacred property, which Heaven, in decreeing man to earn his bread by the sweat of his brow, kindly reserved to him, in the small repose that could be spared from the supply of his necessities.

If there be a government then which prides itself in maintaining the inviolability of property; which provides that none shall be taken directly even for public use without indemnification to the owner, and yet directly violates the property which individuals have in their opinions, their religion, their persons, and their faculties; nay more, which indirectly violates their property, in their actual possessions, in the labor that acquires their daily subsistence, and in the hallowed remnant of time which ought to relieve their fatigues and soothe their cares, the influence [inference?] will have been anticipated, that such a government is not a pattern for the United States.

If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights: they will rival the government that most sacredly guards the former; and by repelling its example in violating the latter, will make themselves a pattern to that and all other governments.
Handout C: Excerpts from the United States Constitution and the Bill of Rights

Article I

Section 8

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States...

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries...

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations...

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy...

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time...

Section 10

No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.
No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress...

The Bill of Rights

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Critical Thinking Questions

1. How did the Framers of the Constitution protect property rights and commerce?

2. Why did the Framers include economic rights in the Constitution and Bill of Rights?
Handout A: Excerpts from Jefferson’s “Opinion on the Constitutionality of a National Bank” (1791)

The bill for establishing a National Bank undertakes among other things:

1. To form the subscribers into a corporation.
2. To enable them in their corporate capacities to receive grants of land; and so far is against the laws of Mortmain.
3. To make alien subscribers capable of holding lands, and so far is against the laws of Alienage.
4. To transmit these lands, on the death of a proprietor, to a certain line of successors; and so far changes the course of Descents.
5. To put the lands out of the reach of forfeiture or escheat, and so far is against the laws of Forfeiture and Escheat.
6. To transmit personal chattels to successors in a certain line and so far is against the laws of Distribution.
7. To give them the sole and exclusive right of banking under the national authority; and so far is against the laws of Monopoly.
8. To communicate to them a power to make laws paramount to the laws of the States; for so they must be construed, to protect the institution from the control of the State legislatures, and so, probably, they will be construed.

I consider the foundation of the Constitution as laid on this ground: That “all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people.”

[XIIth amendment.] To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States, by the Constitution.

1. They are not among the powers specially enumerated: for these are: 1st A power to lay taxes for the purpose of paying the debts of the United States; but no debt is paid by this bill, nor any tax laid. Were it a bill to raise money, its origination in the Senate would condemn it by the Constitution.
2. “To borrow money.” But this bill neither borrows money nor ensures the borrowing it. The proprietors of the bank will be just as free as any other money holders, to lend or not to lend their money to the public. The operation proposed in the bill first, to lend them two millions, and then to borrow them back again, cannot change the nature of the latter act, which will still be a payment, and not a loan, call it by what name you please.
3. To “regulate commerce with foreign nations, and among the States, and with the Indian tribes.” To erect a bank, and to regulate commerce, are very different acts. He who erects a bank, creates a subject of commerce in its bills, so does he who makes a bushel of wheat, or digs a dollar out of the mines; yet neither of these persons regulates
commerce thereby. To make a thing which may be bought and sold, is not to prescribe regulations for buying and selling. Besides, if this was an exercise of the power of regulating commerce, it would be void, as extending as much to the internal commerce of every State, as to its external. For the power given to Congress by the Constitution does not extend to the internal regulation of the commerce of a State, (that is to say of the commerce between citizen and citizen,) which remain exclusively with its own legislature; but to its external commerce only, that is to say, its commerce with another State, or with foreign nations, or with the Indian tribes. Accordingly the bill does not propose the measure as a regulation of trace, but as "productive of considerable advantages to trade." Still less are these powers covered by any other of the special enumerations.

II. Nor are they within either of the general phrases, which are the two following:

1. To lay taxes to provide for the general welfare of the United States, that is to say, “to lay taxes for the purpose of providing for the general welfare.” For the laying of taxes is the power, and the general welfare the purpose for which the power is to be exercised. They are not to lay taxes ad libitum for any purpose they please; but only to pay the debts or provide for the welfare of the Union. In like manner, they are not to do anything they please to provide for the general welfare, but only to lay taxes for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless. It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please...

2. The second general phrase is, "to make all laws necessary and proper for carrying into execution the enumerated powers.” But they can all be carried into execution without a bank. A bank therefore is not necessary, and consequently not authorized by this phrase. ...The Constitution allows only the means which are “necessary,” not those which are merely “convenient” for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any non-enumerated power, it will go to everyone, for there is not one which ingenuity may not torture into a convenience in some instance or other, to some one of so long a list of enumerated powers. It would swallow up all the delegated powers, and reduce the whole to one power, as before observed. Therefore it was that the Constitution restrained them to the necessary means, that is to say, to those means without which the grant of power would be nugatory.

...Every State will have to pay a sum of tax money into the treasury; and the treasury will have to pay, in every State, a part of the interest on the public debt, and salaries to the officers of government resident in that State. In most of the States there will still be a surplus of tax money to come up to the seat of government for the officers residing there. The payments of interest and salary in each State may be made by treasury orders on the State collector. This will take up the greater part of the money he has collected in his State, and consequently prevent the great mass of it from being drawn out of the State. If there be a balance of commerce in favor of that State against the one in which the government
resides, the surplus of taxes will be remitted by the bills of exchange drawn for that commercial balance. And so it must be if there was a bank. But if there be no balance of commerce, either direct or circuitous, all the banks in the world could not bring up the surplus of taxes, but in the form of money. Treasury orders then, and bills of exchange may prevent the displacement of the main mass of the money collected, without the aid of any bank; and where these fail, it cannot be prevented even with that aid.

Perhaps, indeed, bank bills may be a more convenient vehicle than treasury orders. But a little difference in the degree of convenience cannot constitute the necessity which the Constitution makes the ground for assuming any non-enumerated power.

Besides, the existing banks will, without a doubt, enter into arrangements for lending their agency, and the more favorable, as there will be a competition among them for it; whereas the bill delivers us up bound to the national bank, who are free to refuse all arrangement, but on their own terms, and the public not free, on such refusal, to employ any other bank...

Can it be thought that the Constitution intended that for a shade or two of convenience, more or less, Congress should be authorized to break down the most ancient and fundamental laws of the several States; such as those against Mortmain, the laws of Alienage, the rules of descent, the acts of distribution, the laws of escheat and forfeiture, the laws of monopoly? Nothing but a necessity invincible by any other means, can justify such a prostitution of laws, which constitute the pillars of our whole system of jurisprudence. Will Congress be too strait-laced to carry the Constitution into honest effect, unless they may pass over the foundation-laws of the State government for the slightest convenience of theirs?

The negative of the President is the shield provided by the Constitution to protect against the invasions of the legislature: 1. The right of the Executive. 2. Of the Judiciary. 3. Of the States and State legislatures. The present is the case of a right remaining exclusively with the States, and consequently one of those intended by the Constitution to be placed under its protection.

It must be added, however, that unless the President’s mind on a view of everything which is urged for and against this bill, is tolerably clear that it is unauthorized by the Constitution; if the pro and the con hang so even as to balance his judgment, a just respect for the wisdom of the legislature would naturally decide the balance in favor of their opinion. It is chiefly for cases where they are clearly misled by error, ambition, or interest, that the Constitution has placed a check in the negative of the President.
Handout B: Excerpts from Hamilton’s Opinion as to the Constitutionality of the Bank of the United States (1791)

The Secretary of the Treasury having perused with attention the papers containing the opinions of the Secretary of State and Attorney General, concerning the constitutionality of the bill for establishing a National Bank, proceeds, according to the order of the President, to submit the reasons which have induced him to entertain a different opinion...

Now it appears to the Secretary of the Treasury that this general principle is inherent in the very definition of government, and essential to every step of progress to be made by that of the United States, namely: That every power vested in a government is in its nature sovereign, and includes, by force of the term, a right to employ all the means requisite and fairly applicable to the attainment of the ends of such power, and which are not precluded by restrictions and exceptions specified in the Constitution, or not immoral, or not contrary to the essential ends of political society...The circumstance that the powers of sovereignty are in this country divided between the National and State governments, does not afford the distinction required. It does not follow from it, that each of the portion of powers delegated to the one or to the other, is not sovereign with regard to its proper objects. It does not follow from this, that each of the portion of powers delegated to the one or to the other, is not sovereign with regard to its proper objects. It will only follow from it, that each has sovereign power as to certain things, and not as to other things. To deny that the government of the United States has sovereign power, as to its declared purposes and trusts, because its power does not extend to all cases would be equally to deny that the State governments have sovereign power in any case, because their power does not extend to every case. The tenth section of the first article of the Constitution exhibits a long list of very important things which they may not do. And thus the United States would furnish the singular spectacle of a political society without sovereignty, or of a people governed, without government...

Whence it is meant to be inferred, that Congress can in no case exercise any power not Included in those not enumerated in the Constitution. And it is affirmed, that the power of erecting a corporation is not included in any of the enumerated powers.

It is not denied that there are implied well as express powers, and that the former are as effectually delegated as the latter...

To return: It is conceded that implied powers are to be considered as delegated equally with express ones. Then it follows, that as a power of erecting a corporation may as well be implied as any other thing, it may as well be employed as an instrument or mean of carrying into execution any of the specified powers, as any other instrument or mean whatever...

There are two points in the suggestions of the Secretary of State, which have been noted, that are peculiarly incorrect. One is, that the proposed incorporation is against the laws of monopoly, because it stipulates an exclusive right of banking under the national authority; the other, that it gives power to the institution to make laws paramount to those of the States.
But, with regard to the first: The bill neither prohibits any State from erecting as many banks as they please, nor any number of individuals from associating to carry on the business, and consequently, is free from the charge of establishing a monopoly; for monopoly implies a legal impediment to the carrying on of the trade by others than those to whom it is granted.

And with regard to the second point, there is still less foundation. The by-laws of such an institution as a bank can operate only on its own members can only concern the disposition of its own property, and must essentially resemble the rules of a private mercantile partnership. They are expressly not to be contrary to law; and law must here mean the law of a State, as well as of the United States. There never can be a doubt, that a law of a corporation, if contrary to a law of a State, must be overruled as void unless the law of the State is contrary to that of the United States and then the question will not be between the law of the State and that of the corporation, but between the law of the State and that of the United States.

Another argument made use of by the Secretary of State is, the rejection of a proposition by the Convention to empower Congress to make corporations, either generally, or for some special purpose...

The Secretary of State will not deny, that, whatever may have been the intention of the framers of a constitution, or of a law, that intention is to be sought for in the instrument itself, according to the usual and established rules of construction. Nothing is more common than for laws to express and elect more or less than was intended. If, then, a power to erect a corporation in any case be deducible, by fair inference, from the whole or any part of the numerous provisions of the Constitution of the United States arguments drawn from extrinsic circumstances regarding the intention of the Convention must be rejected.

Those of the Attorney General will now properly come under view...

Having observed that the power of erecting corporations is not expressly granted to Congress, the Attorney General proceeds thus:

“If it can be exercised by them, it must be

“1. Because the nature of the federal government implies it.

“2. Because it is involved in some of the specified powers of legislation.

“3. Because it is necessary and proper to carry into execution some of the specified powers.”

To be implied in the nature of the federal government, says he, would beget a doctrine so indefinite as to grasp every power.

This proposition, it ought to be remarked, is not precisely, or even substantially, that which has been relied upon. The proposition relied upon is, that the specified powers of Congress are in their nature sovereign. That it is incident to sovereign power to erect corporations, and that therefore Congress have a right, within the sphere and in relation to the objects of their power, to erect corporations. It shall, however, be supposed that the Attorney General would consider the two propositions in the same light, and that the objection made to the one would be made to the other...

A general legislative authority implies a power to erect corporations in all cases. A particular legislative power implies authority to erect corporations in relation to cases arising under that power only. Hence the affirming that, as incident to sovereign power, Congress may erect a corporation in relation to the collection of their taxes, is no more to affirm that they may do whatever else they please, than the saying that
they have a power to regulate trade, would be to affirm that they have a power to regulate religion; or than the maintaining that they have sovereign power as to taxation, would be to maintain that they have sovereign power as to everything else.

The Attorney General undertakes in the next place to show, that the power of erecting corporations is not involved in any of the specified powers of legislation confided to the national government... to lay and collect taxes, &c.; to borrow money on the credit of the United States, to regulate commerce with sovereign nations; between the States, and with the Indian tribes, to dispose of and make all needful rules and regulations respecting the territory of other property belonging to the United States. The design of which enumeration is to show, what is included under those different heads of power, and negatively, that the power of erecting corporations is not included...

The heads of the power to lay and collect taxes are stated to be:

1. To stipulate the sum to be lent.
2. An interest or no interest to be paid.
3. The time and manner of repaying, unless the loan be placed on an irredeemable fund.

This enumeration is liable to a variety of objections. It omits in the first place, the pledging or mortgaging of a fund for the security of the money lent, an usual, and in most cases an essential ingredient...

The heads of the power to regulate commerce with foreign nations, are stated to be:

1. To prohibit them or their commodities from our ports.
2. To impose duties on them, where none existed before, or to increase existing; duties on them.
3. To subject them to any species of custom-house regulation.
4. To grant them any exemptions or privileges which policy may suggest.

...The following palpable omissions occur at once:

1. Of the power to prohibit the exportation of commodities, which not only exists at all times, but which in time of war it would be necessary to exercise, particularly with relation to naval and warlike stores
2. Of the power to prescribe rules concerning the characteristics and privileges of an American bottom, how she shall be navigated, or whether by citizens or foreigners, or by a proportion of each
3. Of the power of regulating the manner of contracting with seamen; the police of ships on their voyages, &c., of which the Act for the government and regulation of seamen, in the merchants’ service, is a specimen.

That the three preceding articles are omissions, will not be doubted there is a long list of items in addition, which admit of little, if any question, of which a few samples shall be given.

1. The granting of bounties to certain kinds of vessels, and certain species of merchandise; of this nature, is the allowance on dried and pickled fish and salted provisions
2. The prescribing of rules concerning the inspection of commodities to be exported. Though the States individually are competent to this regulation, yet there is no reason, in point of authority at least, why a general system might not be adopted by the United States.
3. The regulation of policies of insurance; of salvage upon goods found at sea, and the disposition of such goods.
4. The regulation of pilots.
5. The regulation of bills of exchange drawn by a merchant of one State upon a merchant of another State. This last rather belongs to the regulation of trade between the States, but is equally omitted in the specifications under that head.

The last enumeration relates to the power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States.

The heads of this power are said to be:

1. To exert an ownership over the territory of the United States which may be properly called the property of the United States, as in the western territory, and to institute a government therein, or

2. To exert an ownership over the other property of the United States.

The idea of exerting an ownership over the territory or other property of the United States, is particularly indefinite and vague... It is admitted, that in regard to the western territory, something more is intended; even the institution of a government, that is, the creation of a body politic, or corporation of the highest nature; one which, in its maturity, will be able itself to create other corporations. Why, then, does not the same clause authorize the erection of a corporation, in respect to the regulation or disposal of any other of the property of the United States...

Hence it appears, that the enumerations which have been attempted by the Attorney General, are so imperfect, as to authorize no conclusion whatever; they, therefore, have no tendency to disprove that each and every of the powers, to which they relate, includes that of erecting corporations, which they certainly do, as the subsequent illustrations will snore and more evince.

It is presumed to have been satisfactorily shown in the course of the preceding observations:

1. That the power of the government, as to the objects intrusted to its management, is, in its nature, sovereign.

2. That the right of erecting corporations is one inherent in, and inseparable from, the idea of sovereign power.

3. That the position, that the government of the United States can exercise no power, but such as is delegated to it by its Constitution, does not militate against this principle.

4. That the word necessary, in the general clause, can have no restrictive operation derogating from the force of this principle indeed’ that the degree in which a measure is or is not necessary cannot be a test of constitutional right, but of expediency only.

5. That the power to erect corporations is not to be considered as an independent or substantive power, but as an incidental and auxiliary one, and was therefore more properly left to implication, than expressly granted.

6. That the principle in question does not extend the power of the government beyond the prescribed limits, because it only affirms a power to incorporate for purposes within the sphere of the specified powers.

And lastly, that the right to exercise such a power in certain cases is unequivocally granted in the most positive and comprehensive terms...

It shall now be endeavored to be shown that there is a power to erect one of the kind proposed by the bill...The proposed bank is to consist of an association of persons, for the purpose of creating a joint capital, to be employed chiefly and essentially in loans. So far the object is not only lawful, but it is the mere exercise of a right which the law allows to every individual...The bill
proposed ill addition that the government shall become a joint proprietor in this undertaking, and that it shall permit the bills of the company, payable on demand, to be receivable in its revenues; and stipulates that it shall not grant privileges, similar to those which are to be allowed to this company, to any others. All this is incontrovertibly within the compass of the discretion of the government. The only question is, whether it has a right to incorporate this company, in order to enable it the more effectually to accomplish ends which are in themselves lawful...

To designate or appoint the money or thing in which taxes are to be paid, is not only a proper but a necessary exercise of the power of collecting them...No part of this can, it is presumed, be disputed...

The institution of a bank has also a natural relation to the regulation of trade between the States, in so far as it is conducive to the creation of a convenient medium of exchange between them, and to the keeping up a full circulation, by preventing the frequent displacement of the metals in reciprocal remittances Money is the very hinge on which commerce turns. And this does not merely mean gold and silver; many other things have served the purpose, with different degrees of utility. Paper has been extensively employed.

It cannot, therefore, be admitted, with the Attorney General, that the regulation of trade between the States, as it concerns the medium of circulation and exchange, ought to be considered as confined to coin. It is even supposable that the whole or the greatest part, of the coin of the country might be carried out of it.

The Secretary of State objects to the relation here insisted upon by the following mode of reasoning: To erect a bank, says he, and to regulate commerce, are very different acts. He who creates a bank, creates a subject of commerce, so does he who snakes a bushel of wheat, or digs a dollar out of the Nines, yet neither of these persons regulates commerce thereby. To make a thing which may be bought and sold, is not to prescribe regulations for buying and selling.

This making the regulation of commerce to consist in prescribing rules for buying and selling this, indeed, is a species of regulation of trade, but is one which falls more aptly within the province of the local jurisdictions than within that of the general government, whose care they must be presumed to have been intended to be directed to those general political arrangements concerning trade on which its aggregated interests depend, rather than to the details of buying and selling. Accordingly, such only are the regulations to be found in the laws of the United States whose objects are to give encouragement to the enterprise of our own merchants, and to advance our navigation and manufactures. And it is in reference to these general relations of commerce, that an establishment which furnishes facilities to circulation, and a convenient medium of exchange and alienation, is to be regarded as a regulation of trade.

The Secretary of State further argues, that if this was a regulation of commerce, it would be void, as extending as much to the internal commerce of every State as to its external. But what regulation of commerce does not extend to the internal commerce of every State?

...The relation of a bank to the execution of the powers that concern the common defense has been anticipated. It has been noted, that at this very moment, the aid of such an institution is essential to the measures to be pursued for the protection of our frontiers.

It now remains to show, that the incorporation
of a bank is within the operation of the provision which authorizes Congress to make all needful rules and regulations concerning the property of the United States...

The support of government—the support of troops for the common defense—the payment of the public debt, are the true final causes for raising money. The disposition and regulation of it, when raised, are the steps by which it is applied to tile ends for which it was raised, not the ends themselves. Hence, therefore, the money to be raised by taxes, as well as any other personal property, must be supposed to come within the meaning, as they certainly do within the letter, of authority to make all needful rules and regulations concerning the property of the United States...

There is an observation of the Secretary of State to this effect which may require notice in this place:—Congress, says he, are not to lay taxes ad libitum, for any purpose they please, but only to pay the debts or provide for the welfare of the Union. Certainly no inference can be drawn from this against the power of applying their money for the institution of a bank. It is true that they cannot without breach of trust lay taxes for any other purpose than the general welfare; but so neither can any other government. The welfare of the community is the only legitimate end for which money can be raised on the community. Congress can be considered as under only one restriction which does not apply to other governments, they cannot rightfully apply the money they raise to any purpose merely or purely local.

But, with this exception, they have as large a discretion in relation to the application of money as any legislature whatever. The constitutional test of a right application must always be, whether it be for a purpose of general or local nature. If the former, there can be no want of constitutional power. The quality of the object as how far it will really promote or not the welfare of the Union must be matter of conscientious discretion, and the arguments for or against a measure in this light must be arguments concerning expediency or inexpediency, not constitutional right. Whatever relates to the general order of the finances, to the general interests of trade, etc., being general objects, are constitutional ones for the Application of money.

A bank, then, whose bills are to circulate in all the revenues of the country, is evidently a general object, and, for that very reason, a constitutional one, as far as regards the appropriation of money to it...

A hope is entertained that it has, by this time, been made to appear, to the satisfaction of the President, that a bank has a natural relation to the power of collecting taxes—to that of regulating trade—to that of providing for the common defense and that, as the bill under consideration contemplates the government in the light of a joint proprietor of the stock of the bank, it brings the case within the provision of the clause of the Constitution which immediately respects the property of the United States.

Under a conviction that such a relation subsists, the Secretary of the Treasury, with all deference, conceives that it will result as a necessary consequence from the position that all the special powers of government are sovereign, as to the proper objects that the incorporation of a bank is a constitutional measure, and that the objections taken to the bill, in this respect, are ill-founded.

But, from an earnest desire to give the utmost possible satisfaction to the mind of the President, on so delicate and important a subject, the Secretary of the Treasury will ask his indulgence, while he gives some additional illustrations of cases in which a power of erecting corporations
may be exercised, under some of those heads of the specified powers of the government, which are alleged to include the right of incorporating a bank.

i. It does not appear susceptible of a doubt, that if Congress had thought proper to provide, in the collection laws, that the bonds to be given for the duties should be given to the collector of the district, A or B. as the case might require, to inure to him and his successors in office, in trust for the United States, that it would have been consistent with the Constitution to make such an arrangement; and yet this, it is conceived, would amount to an incorporation.

ii. It is not an unusual expedient of taxation to farm particular branches of revenue—that is, to mortgage or sell the product of them for certain definite sums, leaving the collection to the parties to whom they are mortgaged or sold...

3. Suppose a new and unexplored branch of trade should present itself, with some foreign country. Suppose it was manifest that to undertake it with advantage required an union of the capitals of a number of individuals, and that those individuals would not be disposed to embark without an incorporation, as well to obviate that consequence of a private partnership which makes every individual liable in his whole estate for the debts of the company, to their utmost extent, as for the more convenient management of the business—what reason can there be to doubt that the national government would have a constitutional right to institute and incorporate such a company? None. They possess a general authority to regulate trade with foreign countries. This is a mean which has been practiced to that end, by all the principal commercial nations, who have trading companies to this day, which have subsisted for centuries. Why may not the United States, constitutionally, employ the means usual in other countries, for attaining the ends intrusted to them?

A power to make all needful rules and regulations concerning territory, has been construed to mean a power to erect a government. A power to regulate trade, is a power to make all needful rules and regulations concerning trade. Why may it not, then, include that of erecting a trading company, as well as, in other cases, to erect a government?

...The very general power of laying and collecting taxes, and appropriating their proceeds—that of borrowing money indefinitely—that of coining money, and regulating foreign coins—that of making all needful rules and regulations respecting the property of the United States. These powers combined, as well as the reason and nature of the thing, speak strongly this language: that it is the manifest design and scope of the Constitution to vest in Congress all the powers requisite to the effectual administration of the finances of the United States. As far as concerns this object, there appears to be no parsimony of power...

The fact, for instance, that all the principal commercial nations have made use of trading corporations or companies, for the purpose of external commerce, is a satisfactory proof that the establishment of them is an incident to the regulation of the commerce...

It has been stated as an auxiliary test of constitutional authority to try whether it abridges any pre-existing right of any State, or any individual. The proposed investigation will stand the most severe examination on this point. Each State may still erect as many banks as it pleases. Every individual may still carry on the banking business to any extent he pleases.

Another criterion may be this. Whether the institution or thing has a more direct relation, as to its uses, to the objects of the reserved powers
of the State governments than to those of the powers delegated by the United States. This, rule, indeed, is less precise than the former, but it may still serve as some guide. Surely a bank has more reference to the objects intrusted to the national government than to those left to the care of the State governments. The common defense is decisive in this comparison.

There are, indeed, a variety of observations of the Secretary of State designed to show that the utilities ascribed to a bank, in relation to the collection of taxes, and to trade, could be obtained without it; to analyze which, would prolong the discussion beyond all bounds. It shall be forborne for two reasons. First, because the report concerning the bank, may speak for itself in this respect and secondly, because all those observations are grounded on the erroneous idea that the quantum of necessity or utility is the test of a constitutional exercise of power...
Handout C: The Constitutionality of a National Bank

Write a one-page essay regarding the constitutionality of national bank. Make sure to include the following information:

1. A summary of Thomas Jefferson’s arguments against the constitutionality of a national bank.
2. A summary of Alexander Hamilton’s arguments for the constitutionality of a national bank.
3. With which argument do you agree? Explain your answer.
James Madison walked into the Philadelphia tavern alone. It was May of 1787 and none of the other delegates to the Constitutional Convention had arrived yet. Madison was the only one there. But he didn’t mind. After all the thinking and writing and planning he’d done on what the new government should look like, he didn’t mind a few more days. Madison pulled up a chair, dropped a stack of papers and several heavy books on the wooden table, and sat down to review his notes once more.

The Constitutional Convention

The Convention began in late May, and as the summer went on the delegates came to agreements on many aspects of the new federal government. Many of James Madison’s ideas formed the backbone of the new constitution: a plan for a republic that was “partly national, and partly federal,” as Madison would later describe it. The new national government was to have “national powers,” which had “national ends” or purposes for the entire nation. The states retained important powers to address tasks that did not require national direction or management.

On September 14, as the Convention drew to a close, James Madison, along with delegates Benjamin Franklin and James Wilson, proposed that Congress be given the explicit power to grant charters of incorporation for the construction of canals. They believed this would allow the federal government to promote transportation and commerce among the states. Madison explained that, since the new constitution would remove the political obstacles among the states, “a removal of the natural ones as far as possible ought to follow.”

But delegate Roger Sherman of Connecticut objected. He pointed out that the people of the whole nation would be taxed for such internal improvements but the economic benefits would be felt only in the specific locations where they were built. Fellow New Engander Rufus King also objected, noting that these projects would lead to competition among the states for the federal funds to be spent. The proposal failed. Thus began a controversy as old as the Constitution: To what extent and in what ways does the Constitution permit Congress to spend money to promote the “general welfare”?

President Madison

James Madison was elected president in 1808. In his first Inaugural Address, President Madison pledged “to support the Constitution, which is the cement of the Union, as well in its limitations as in its authorities; to respect the rights and authorities reserved to the States and to the people.”

By 1815, President Madison presided over a country of eight million people. The nation spread over the territory from the Atlantic seacoast past the Appalachians, from Maine to Georgia, and spilling into the area along the Mississippi River. Commerce, transportation, and communication across this vast territory were difficult and, for some areas, practically nonexistent. It was clear that without significant improvements in the nation’s infrastructure, the commercial and agricultural development of the new nation would be crippled. But who would provide this new development: the federal government, or the states?
President Madison agreed with Thomas Jefferson that, while such improvements were desirable, even essential, it would be necessary to amend the Constitution in order to give Congress the authority to embark on such projects. When Madison was able to turn his attention to domestic policy after the end of the War of 1812, he urged that Congress propose a Constitutional amendment that would authorize the federal government to begin building national roads and canals.

The “Bonus Bill”

Congress did not address the constitutional issue. Instead, the Congress drafted a bill that would apply money raised from the newly reauthorized National Bank toward the building of roads and canals. In his last official act as President, Madison vetoed the “Bonus Bill” as it was called.

In his veto message, Madison noted that neither the power to regulate commerce, nor to provide for the common defense, nor to promote the general welfare could be understood to grant Congress the power to construct roads and canals. He wrote that “the legislative powers vested in Congress are specified and enumerated in the eighth section of the first article of the Constitution, and it does not appear that the power proposed to be exercised by the bill is among the enumerated powers, or that it falls by any just interpretation with the power to make laws necessary and proper for carrying into execution those or other powers vested by the Constitution in the Government of the United States.”

In Madison’s view, the fact that an important policy was a great idea and would lead to significant improvements did not make it constitutional: “I am not unaware of the great importance of roads and canals and the improved navigation of water courses... But seeing that such a power is not expressly given by the Constitution, and believing that it cannot be deduced from any part of it...I have no option but to withhold my signature from it.”

Finally, Madison believed that interpreting the powers of the federal government too loosely would lead the federal government to become too powerful. He wrote, “the permanent success of the Constitution depends on a definite partition of powers between the general and the state governments, and that no adequate landmarks would be left by the constructive extension of the powers of Congress as proposed in the bill.” If the limits of the Constitution were not respected, the national government would overpower the state governments.

Because of his conviction that the powers of the federal government must be limited to those enumerated by the Constitution, President Madison used the veto power to prevent the Congress from carrying out a goal that he himself had advocated thirty years earlier.

Critical Thinking Questions

1. What proposal of Madison’s regarding canals was voted down at the Constitutional Convention?
2. Why did Roger Sherman and Rufus King object to Madison’s proposal at the Convention?
3. What was the “Bonus Bill”?
4. Why did Madison veto the “Bonus Bill”?
5. Do you believe Madison was correct to veto the “Bonus Bill”? Why or why not?
Clause 1
The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

Clause 2
The Congress shall have power...To borrow money on the credit of the United States;

Clause 3
The Congress shall have power...To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

Clause 4
The Congress shall have power...To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

Clause 5
The Congress shall have power...To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;
Clause 6
The Congress shall have power...To provide for the punishment of counterfeiting the securities and current coin of the United States;

Clause 7
The Congress shall have power...To establish post offices and post roads;

Clause 8
The Congress shall have power...To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

Clause 9
The Congress shall have power...To constitute tribunals inferior to the Supreme Court;

Clause 10
The Congress shall have power...To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

Clause 11
The Congress shall have power...To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
Clause 12
The Congress shall have power...To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

Clause 13
The Congress shall have power...To provide and maintain a navy;

Clause 14
The Congress shall have power...To make rules for the government and regulation of the land and naval forces;

Clause 15
The Congress shall have power...To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

Clause 16
The Congress shall have power...To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
Clause 17
The Congress shall have power...To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;

Clause 18
The Congress shall have power...To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.
1. Congress wants to authorize the creation of a National Bank.

**Outcome:** On April 10, 1816, Congress passed an act entitled “An Act to Incorporate the Subscribers to the Bank of the United States.” President Madison agreed with the constitutionality of this act. Many states opposed branches of the National Bank within their borders. In *McCulloch v. Maryland* (1819), the Supreme Court upheld the creation of the bank. Supreme Court Chief Justice John Marshall wrote, “Should Congress, in the execution of its powers, adopt measures which are prohibited by the constitution; or should Congress under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government; [the Court would] say that such an act was not the law of the land...

Although, among the enumerated powers of government, we do not find the word ‘bank,’... we find the great powers to lay and collect taxes; to borrow money; to regulate commerce...

Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.”

2. Congress wants to pass a bill establishing a national minimum wage and a maximum 44-hour work week.

**Outcome:** Congress enacted the Fair Labor Standards Act in 1938, claiming power to do so under the Commerce Clause (Clause 3). It was signed by President Franklin Roosevelt and upheld by the Supreme Court in *United States v. Darby* (1941).

3. Congress wants to pass a bill creating “gun-free school zones,” making it illegal to have a firearm in school zones.

**Outcome:** Citing its power to regulate interstate commerce, Congress enacted the Gun-Free School Zones Act of 1990 which made it a federal crime to possess a gun in the vicinity of schools. The Act was signed into law by President George H. W. Bush. The Supreme Court struck the law down on the grounds that Congress had exceeded its constitutional authority under the Commerce Clause in *US v. Lopez* (1995).
4. Congress wants to pass a law called the Controlled Substances Act. Among many other regulations, the law bans possession of marijuana.

Outcome: In *Gonzalez v. Raich* (2005), the Supreme Court upheld the Controlled Substances Act and affirmed the power of the executive branch to ban local use and cultivation of marijuana, even for medical purposes. The Court reasoned, “The [state] exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market.” Therefore, the Court argued, the “aggregate impact on the national market” would be “substantial.” Because personal use would substantially affect interstate commerce, the Court held it was within Congress’s power to regulate.
# Handout D: Madison, Federal Law, and You

<table>
<thead>
<tr>
<th>Law/Case</th>
<th>What did the challenged law do?</th>
<th>Do you believe Madison would have signed this bill?</th>
<th>Why or why not?</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Bonus Bill” (1817)</td>
<td>Congress would apply profits from the newly reauthorized national bank toward the building of roads and canals.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td><em>McCulloch v. Maryland</em> (1819)</td>
<td>Congress authorizes the creation of a National Bank.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fair Labor Standards Act (1938)</td>
<td>Congress sets a national minimum wage, and a maximum 44-hour work week.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Handout E: *McCulloch v. Maryland* (1819) Case Background

The Necessary and Proper Clause gives Congress the power to “make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States.” It is not a free-standing grant of power, but rather was intended to give Congress the power to enact laws needed to “carry into execution” the various powers granted to the federal government by other parts of the Constitution.

The wording of the Clause suggests that a law authorized by it must meet two separate requirements: it must be “necessary” to the execution of some power granted to the federal government, and also “proper.” Since at least the 1790s, debate has raged over the meaning of these two terms. In the early republic, debate over the interpretation of the Clause focused on the constitutionality or lack thereof of the First Bank of the United States. When the Bank was first proposed in 1790, James Madison and Thomas Jefferson argued that its establishment was not authorized by the Necessary and Proper Clause because the word “necessary” should be interpreted to include only such measures as are truly essential to the implementation of other federal powers.

By contrast, Secretary of the Treasury Alexander Hamilton defended the Bank, arguing that “necessary” should be interpreted to include any law that is “useful” or “convenient.” The issue of the constitutionality of the Bank did not reach the Supreme Court until 1819, when the justices decided the case of *McCulloch v. Maryland*. While the Supreme Court has addressed the meaning of the word, “necessary” in a number of cases over time, it has focused far less attention to the meaning of “proper.” Controversy over both terms continues.
By the time President George Washington named Alexander Hamilton Secretary of the Treasury, Hamilton had already begun to craft a plan to assure the economic success of the new nation. Central to his plan, which was modeled on the English financial system, was the incorporation of a national bank that would stimulate the economy and establish the credit of the United States. Other members of Washington’s cabinet were skeptical. Washington asked each one to prepare a report explaining his answer to this question: Does the Constitution permit Congress to establish a national bank? Secretary of State Thomas Jefferson, (Document F) interpreted the Necessary and Proper Clause narrowly, deciding that the bank was unconstitutional because it was not specifically included in the enumerated powers of Congress. Based on his interpretation of the Necessary and Proper Clause, Attorney General Edmund Randolph (Document G) advised the President that the bank was unconstitutional. Hamilton built his defense of the bank on the implied powers of the Necessary and Proper Clause. Hamilton’s argument (Document H) was most persuasive to Washington and he signed the Bank Bill. These approaches to understanding the powers of the national government set the foundation for analysis of the constitutional limits on national power continuing into the present day.

Document I: McCulloch v. Maryland (1819), Unanimous Opinion

In 1819 the United States had been a nation under the Constitution for barely a generation when an important case about federal power reached the Court. A National Bank had been established in 1791. When its initial twenty-year charter came up for renewal in 1811, Congress voted not to extend it. Then, following the nation’s brush with bankruptcy in the War of 1812, Congress established the second National Bank of the United States in 1816. Those who supported a National Bank maintained that it was necessary to control the amount of unregulated paper money issued by state banks. However, most states opposed branches of the National Bank within their borders. They did not want the National Bank competing with their own banks, and objected to the establishment of a National Bank as an unconstitutional exercise of Congress’s power.

The state of Maryland imposed a tax of $15,000/year on the National Bank, which cashier James McCulloch of the Baltimore branch refused to pay. The case went to the Supreme Court. Maryland argued that as a sovereign state, it had the power to tax any business within its borders. McCulloch’s attorneys argued that it was “necessary and proper” for Congress to establish a national bank in order to carry out its enumerated powers.

Chief Justice John Marshall wrote that the Necessary and Proper Clause provided for implied powers, including a power to establish the bank.
Document J: Jackson’s Veto Message, July 10, 1832

By the 1830s, the National Bank had experienced several phases of good and bad management, and had weathered charges of corruption. The Bank was a volatile political issue, with many supporters in the East and many detractors in the West and South. The 1828 election of Andrew Jackson as President brought the Bank’s most powerful enemy to the White House. He saw the Bank as a greedy monopoly dominated by a powerful elite and foreign interests. The Bank’s second charter was set to expire in 1836, but in 1832 Senator Henry Clay proposed re-chartering it early, explaining a number of benefits and winning approval of his bill in both Houses of Congress. However, Jackson’s view of the Bank is summarized in a February 19, 1932 letter to John Coffee: “Unless the corrupting monster should be shraven with its ill-gotten power, my veto will meet it frankly and fearlessly.” As promised, Jackson vetoed the bill. Congress could not muster the two-thirds majority needed to overturn the veto, so the bank’s charter expired in 1836 and was never renewed.

Document L: U.S. v. Comstock (2010), Majority Opinion (7-2)

President George W. Bush signed the Adam Walsh Child Protection and Safety Act into law in 2006. The law required that sex offenders register their whereabouts periodically, created a national sex offender registry, and Section 4248 of the law provided for continued incarceration of certain offenders even after they had completed their criminal sentences. A federal judge had authority to civilly commit individuals who were in the federal prison system if it were proven that they continued to be sexually dangerous.

Just before Graydon Comstock was to have completed his 37-month sentence for receiving child pornography, U.S. Attorney General Alberto Gonzales certified that he remained a sexually dangerous person, which meant that he would not be released. Lower courts had ruled that Section 4248 of the law was unconstitutional, on the basis that it exceeded the constitutional power of Congress. Justice Breyer delivered the opinion of the Supreme Court, determining that the powers implied in the Necessary and Proper Clause built on themselves and granted Congress the power to enact such a law.
Handout G: Documents

Key Question: To what extent does the Necessary and Proper Clause grant a new power to Congress? What does “Proper” mean?

Documents:

A. United States Constitution, Article 1, Section 8, Clause 18 (1787)
B. An Old Whig (1787)
C. Brutus No. 1 (1787)
D. Federalist No. 33 by Alexander Hamilton (1788)
E. Federalist No. 39 by James Madison (1788)
F. Thomas Jefferson, Opinion on the Constitutionality of the Bill for Establishing a
G. National Bank (1791)
H. Memorandum #1: Edmund Randolph to George Washington (1791)
I. Alexander Hamilton’s Opinion on the National Bank (1791)
J. McCulloch v. Maryland (1819), Unanimous Opinion
K. Jackson’s Veto Message, July 10, 1832
L. King Andrew the First cartoon (1833)
M. U.S. v. Comstock (2010), Majority Opinion
N. U.S. v. Comstock (2010), Dissenting Opinion
Document A

United States Constitution, Article 1, Section 8, Clause 18 (1787)

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

1. **Underline the most important words and phrases in this passage and put them in your own words**

Document B

An Old Whig (1787)

My object is to consider that undefined, unbounded and immense power which is comprised in the following clause: "And, to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States; or in any department or offices [officer] thereof." Under such a clause as this can any thing be said to be reserved and kept back from Congress? ...Besides the powers already mentioned, other powers may be assumed hereafter as contained by implication in this constitution. The Congress shall judge of what is necessary and proper in all these cases and in all other cases—in short in all cases whatsoever.

Where then is the restraint? How are Congress bound down to the powers expressly given? What is reserved or can be reserved?

1. **State in your own words the main concerns of the author of this passage.**
Document C

Brutus No. 1 (1787)

[T]he legislature of the United States are vested with the great and uncontrollable powers, of laying and collecting taxes, duties, imposts, and excises...And are by this clause invested with the power of making all laws, proper and necessary, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the state governments, and reduce this country to one single government.

[I]t is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with power, are ever disposed to increase it, and to acquire a superiority over every thing that stands in their way. This disposition, which is implanted in human nature, will operate in the federal legislature to lessen and ultimately to subvert the state authority, and having such advantages, will most certainly succeed, if the federal government succeeds at all.

1. According to Brutus, what governments are in danger?
2. What observation does Brutus make about human nature?
3. What does Brutus say will necessarily happen if the federal government is to succeed at all? Why?

Document D

Federalist No. 33 by Alexander Hamilton (1788)

These two clauses [the “necessary and proper clause” and the “supremacy clause”] have been the sources of much virulent invective and petulant declamation against the proposed constitution, they have been held up to the people, in all the exaggerated colours of misrepresentation, as the pernicious engines by which their local governments were to be destroyed and their liberties exterminated—as the hideous monster whose devouring jaws would spare neither sex nor age, nor high nor low, nor sacred nor profane; and yet strange as it may appear, after all this clamour, to those who may not have happened to contemplate them in the same light, it may be affirmed with perfect confidence, that the constitutional operation of the intended government would be precisely the same, if these clauses were entirely obliterated, as if they were repeated in every article....

If the Federal Government should overpass the just bounds of its authority, and make a tyrannical use of its powers; the people whose creature it is must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution, as the exigency may suggest and prudence justify. The propriety of a law in a constitutional light, must always be determined by the nature of the powers upon which it is founded

1. According to Hamilton, why are these two clauses not cause for concern?
2. What must the people do if the government becomes tyrannical?
Document E

**Federalist No. 39 by James Madison (1788)**

But if the government be national with regard to the operation of its powers, it changes its aspect again when we contemplate it in relation to the extent of its powers. The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government...In this relation, then, the proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality....

1. According to Madison, the government established by the Constitution has “an indefinite supremacy over all persons and things” as long as what?

2. What does Madison say is the role of the tribunal (the Supreme Court) in deciding questions between the federal and state governments?

---

Document F

**Thomas Jefferson, Opinion on the Constitutionality of the Bill for Establishing a National Bank (1791)**

I consider the foundation of the Constitution as laid on this ground that “all powers not delegated to the U.S. by the Constitution, not prohibited by it to the states, are reserved to the states or to the people” [Tenth Amendment]. To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and other powers assumed by this bill have not, in my opinion, been delegated to the U.S. by the Constitution. They are not among the powers specially enumerated...

They are not to do anything they please to provide for the general welfare...[G]iving a distinct and independent power to do any act they please which may be good for the Union, would render all the preceding and subsequent enumerations of power completely useless. It would reduce the whole instrument to a single phrase that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please and this can never be permitted.

1. Name at least two main reasons that Jefferson gave for not interpreting the powers of Congress broadly.
The Attorney General of the United States in obedience to the order of the President of the United States, has had under consideration the bill, entitled “An Act to incorporate the Subscribers to the Bank of the United States,” and reports on it, in point of constitutionality, as follows...

The general qualities of the federal government, independent of the Constitution and the specified powers, being thus insufficient to uphold the incorporation of a bank, we come to the last enquiry, which has been already anticipated, whether it [a National Bank] be sanctified by the power to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution. To be necessary is to be incidental, or in other words may be denominated the natural means of executing a power.

The phrase, “and proper,” if it has any meaning, does not enlarge the powers of Congress, but rather restricts them. For no power is to be assumed under the general clause but such as is not only necessary but proper, or perhaps expedient also...However, let it be propounded as an eternal question to those who build new powers on this clause, whether the latitude of construction which they arrogate will not terminate in an unlimited power in Congress?

In every aspect therefore under which the attorney general can view the act, so far as it incorporates the Bank, he is bound to declare his opinion to be against its constitutionality.

1. According to Randolph’s reasoning, how should the word, “necessary” be defined?

2. In your own words, explain Randolph’s view that “The phrase, ‘and proper,’ if it has any meaning, does not enlarge the powers of Congress, but rather restricts them.”
Alexander Hamilton’s Opinion on the National Bank (1791)

It is not denied that there are implied well as express powers, and that the former are as effectually delegated as the latter...

Then it follows, that as a power of erecting a corporation may as well be implied as any other thing, it may as well be employed as an instrument or mean of carrying into execution any of the specified powers, as any other instrument or mean whatever. The only question must be in this, as in every other case, whether the mean to be employed or in this instance, the corporation to be erected, has a natural relation to any of the acknowledged objects or lawful ends of the government. Thus a corporation may not be erected by Congress for superintending the police of the city of Philadelphia, because they are not authorized to regulate the police of that city. But one may be erected in relation to the collection of taxes, or to the trade with foreign countries, or to the trade between the States, or with the Indian tribes; because it is the province of the federal government to regulate those objects, and because it is incident to a general sovereign or legislative power to regulate a thing, to employ all the means which relate to its regulation to the best and greatest advantage...

To establish such a right, it remains to show the relation of such an institution to one or more of the specified powers of the government. Accordingly it is affirmed, that it has a relation more or less direct to the power of collecting taxes; to that of borrowing money; to that of regulating trade between the states; and to those of raising, supporting & maintaining fleets & armies...

The constitutionality of all this would not admit of a question, and yet it would amount to the institution of a bank, with a view to the more convenient collection of taxes... To deny the power of the government to add these ingredients to the plan, would be to refine away all government.

1. Below are paraphrases of steps that Hamilton followed in order to reason that creation of the first national bank was a constitutional exercise of the power of Congress. Number them in the correct order to follow Hamilton’s reasoning.

_________ Implied powers “are as effectually delegated as” the expressed powers.

_________ Certain expressed powers are related to establishment of a national bank.

_________ Implied powers are inherent in the definition of government: “To deny the power of the government to add these ingredients to the plan, would be to refine away all government.”

_________ We must determine whether there is a natural relation between the national bank and one or more of the lawful purposes of government.
Document I

McCulloch v. Maryland (1819) Unanimous Opinion

Although, among the enumerated powers of Government, we do not find the word “bank” or “incorporation,” we find the great powers, to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation are entrusted to its Government... [I]t may with great reason be contended that a Government entrusted with such ample powers, on the due execution of which the happiness and prosperity of the Nation so vitally depends, must also be entrusted with ample means for their execution...

Does [the word, “necessary”] always import an absolute physical necessity...? We think it does not. ... [W]e find that it frequently imports no more than that one thing is convenient, or useful, or essential to another. To employ the means necessary to an end is generally understood as employing any means calculated to produce the end, and not as being confined to those single means without which the end would be entirely unattainable...

[It is clear] that any means adapted to the end, any means which tended directly to the execution of the Constitutional powers of the Government, were in themselves Constitutional...

We think so for the following reasons:

1st. The clause is placed among the powers of Congress, not among the limitations on those powers.

2d. Its terms purport to enlarge, not to diminish, the powers vested in the Government. It purports to be an additional power, not a restriction on those already granted...

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional...

That the power to tax involves the power to destroy [is a proposition] not to be denied...

The Court has [determined] that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government. This is, we think, the unavoidable consequence of that supremacy which the Constitution has declared.

We are unanimously of opinion that the law passed by the Legislature of Maryland, imposing a tax on the Bank of the United States is unconstitutional and void.

1. How did Chief Justice John Marshall interpret the following clauses of the Constitution in the unanimous opinion in McCulloch v. Maryland: Commerce Clause, the Necessary and Proper Clause, and the Supremacy Clause?

2. Did the opinion in this case align more with the reasoning of Hamilton, Jefferson, or Randolph?
To the Senate.

...It is maintained by the advocates of the bank that its constitutionality in all its features ought to be considered as settled by precedent and by the decision of the Supreme Court. To this conclusion I can not assent...

The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others... The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve...

I understand them to have decided that inasmuch as a bank is an appropriate means for carrying into effect the enumerated powers of the General Government, therefore the law incorporating it is in accordance with that provision of the Constitution which declares that Congress shall have power “to make all laws which shall be necessary and proper for carrying those powers into execution.” Having satisfied themselves that the word “necessary” in the Constitution means “needful,” “requisite,” “essential,” “conducive to,” and that “a bank” is a convenient, a useful, and essential instrument in the prosecution of the Government’s “fiscal operations,” they conclude that to “use one must be within the discretion of Congress”

...Under the decision of the Supreme Court, therefore, it is the exclusive province of Congress and the President to decide whether the particular features of this act are necessary and proper in order to enable the bank to perform conveniently and efficiently the public duties assigned to it as a fiscal agent, and therefore constitutional, or unnecessary and improper, and therefore unconstitutional.

...[M]any of the powers and privileges conferred on it can not be supposed necessary for the purpose for which it is proposed to be created, and are not, therefore, means necessary to attain the end in view, and consequently not justified by the Constitution...

It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes.... There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing. In the act before me there seems to be a wide and unnecessary departure from these just principles...

Most of the difficulties our Government now encounters and most of the dangers which impend over our Union have sprung from an abandonment of the legitimate objects of Government by our national legislation, and the adoption of such principles as are embodied in this act...

1. What are the main objections that President Jackson raised against the National Bank?
Document K
King Andrew the First cartoon, 1833

1. Why was Jackson attacked as a tyrant in this cartoon?
2. Was Jackson trying to expand or limit the role of the national government?
The Necessary and Proper Clause grants Congress broad authority to enact federal legislation. Nearly 200 years ago, Chief Justice Marshall emphasized that the word “necessary” does not mean “absolutely necessary.” Congress has the implied power to criminalize any conduct that might interfere with the exercise of an enumerated power... we must reject [the]argument that the Necessary and Proper Clause permits no more than a single step between an enumerated power and an Act of Congress...

To be sure, as we have previously acknowledged, the Federal Government undertakes activities today that would have been unimaginable to the Framers in two senses; first, because the Framers would not have conceived that any government would conduct such activities; and second, because the Framers would not have believed that the Federal Government, rather than the States, would assume such responsibilities. Yet the powers conferred upon the Federal Government by the Constitution were phrased in language broad enough to allow for the expansion of the Federal Government’s role.

The Framers demonstrated considerable foresight in drafting a Constitution capable of such resilience through time. As Chief Justice Marshall observed nearly 200 years ago, the Necessary and Proper Clause is part of “a constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs.”

1. **How does this ruling interpret the Necessary and Proper Clause?**

2. **Who or what should be the one to do the “adapting” of the Constitution Chief Justice Marshall referred to 200 years ago?**
Document M

U.S. v. Comstock (2010), Dissenting Opinion

The Constitution plainly sets forth the “few and defined” powers that Congress may exercise. Article I “vest[s]” in Congress “[a]ll legislative Powers herein granted,” §1, and carefully enumerates those powers in §8. The final clause of §8, the Necessary and Proper Clause, authorizes Congress “[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” Art. I, §8, cl. 18. As the Clause’s placement at the end of §8 indicates, the “foregoing Powers” are those granted to Congress in the preceding clauses of that section. The “other Powers” to which the Clause refers are those “vested” in Congress and the other branches by other specific provisions of the Constitution.

...Congress lacks authority to legislate if the objective is anything other than “carrying into Execution” one or more of the Federal Government’s enumerated powers.

This limitation was of utmost importance to the Framers...Referring to the “powers declared in the Constitution,” Alexander Hamilton noted that “it is expressly to execute these powers that the sweeping clause ... authorizes the national legislature to pass all necessary and proper laws.” James Madison echoed this view, stating that “the sweeping clause ... only extend[s] to the enumerated powers.” Statements by delegates to the state ratification conventions indicate that this understanding was widely held by the founding generation...

I respectfully dissent.

1. On what basis does the dissenting opinion disagree with the majority’s interpretation of the Necessary and Proper clause?
Directions: For each case listed on the table below, assign a score on a scale of 1 – 10, showing to what extent federal power changed.
As soon as he took office, President Cleveland demonstrated his commitment to an efficient government which granted special favors to no one. He supported the Pendleton Bill, a federal law requiring certain government jobs to be based on merit and not just political party loyalty. Cleveland changed the description of more than eleven thousand jobs so that those positions would be subject to this law.

Cleveland worked to make the federal government more efficient as well as less partisan. He canceled orders from Navy contractors who were producing outdated vessels. He investigated railroad companies that had been given federal land, but that had not lived up to the terms of their contracts. Millions of acres were returned to the federal government. He signed the Interstate Commerce Act in 1887, which was intended to stop railroads’ discriminatory practices favoring big business.

With a surplus in the US Treasury, he called for lower taxes. Since there was no income tax at that time, this meant reductions in protective tariffs (import taxes).

As he told a friend, Cleveland understood his chief legislative duty to be stopping bad laws, rather than trying to convince Congress to pass good ones. Cleveland used the veto more than any other U.S. president before or since. In his first term alone, the Democratic president vetoed more than 400 bills passed by the Republican Congress.

After the Civil War, pension applications poured in from people claiming to be veterans or widows of veterans. While many were genuine, many more were falsified. More than half of the bills Cleveland vetoed in his first term were fraudulent claims for Civil War pensions.

As Cleveland’s vetoes continued, the Grand Army of the Republic (a group of Union Army veterans) lobbied Congress for broader private pensions. The group convinced Congress to pass a bill granting pensions to veterans for disabilities that were not caused by military service. Despite strong public support for the bill, Cleveland vetoed it. He said, "Public money appropriated for pensions...should be devoted to the [assistance] of those who in the defense of the Union and the nation's service have worthily suffered, and who in the day of their dependence resulting from such suffering are entitled the benefactions of their government."

The Texas Seed Bill

Cleveland opposed the use of public money to relieve individual suffering unrelated to public service even when the suffering was genuine. One of Cleveland's most famous vetoes was his veto of the Texas Seed Bill in 1887. A long and severe drought had stricken areas of Texas. With no grass to graze, eighty-five percent of cattle in the western part of the state died. Those cattle that remained were starving, often motherless calves. Many farmers were also close to starvation and had eaten their seed corn to survive. Congress authorized a special appropriation to send seeds to the drought-stricken farmers. The amount

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($10,000, or approximately $223,000 in today's dollars) was small and the need was great, but Cleveland vetoed the bill.

His veto message expressed his commitment to the Constitution and the importance of private charity. He said that while he thought the intentions of the bill were good, he had to withhold his approval. He wrote:

“I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the general government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit. A prevalent tendency to disregard the limited mission of this power and duty should, I think, be steadfastly resisted, to the end that the lesson should be constantly enforced that, though the people support the government, the government should not support the people.”

Furthermore, Cleveland said, it would weaken the “bonds of a common brotherhood” for the government to provide assistance to individuals where individuals, families, communities and private charities otherwise would.

Finally, the veto message suggested that if Congress wanted to relieve the suffering of Texas farmers, Senators and Representatives from each state could voluntarily give up the share of grain distributed by the Department of Agriculture each year. “The constituents, for whom in theory this grain is intended, could well bear the temporary deprivation, and the donors would experience the satisfaction attending deeds of charity.”

Cleveland’s fight against protective tariffs was unpopular among the groups the tariffs protected, and Cleveland lost the presidency to William Henry Harrison in 1888. (Cleveland won a plurality of the popular vote, but lost the electoral vote and therefore the presidency.) As the Clevelands were leaving Washington D.C., the First Lady is said to have told the White House staff to keep an eye on the furniture because they’d be back—and she was right. Cleveland was elected to the Presidency again in 1892, the only president ever to serve two non-consecutive terms.

In his second term, Cleveland worked to maintain the gold standard, which he thought was the only guarantee of a stable currency. He sent federal troops to suppress the violent Pullman strike, where rail workers refused to switch Pullman cars and crippled mail service west of Chicago. Congress went on to pass lower tariffs, though they were not as low as Cleveland had hoped. The New York Sun wrote after President Cleveland had left office, “As President, Mr. Cleveland enforced the laws and did not truckle to organized violence or crouch before public clamor. [He] is sure of an honorable place in history and of the final approval of his countrymen.”
UNITED STATES, February 16, 1887

To the House of Representatives of the United States:

I return without my approval House bill number ten thousand two hundred and three, entitled “An Act to enable the Commissioner of Agriculture to make a special distribution of seeds in drought-stricken counties of Texas, and making an appropriation therefor.” [1]

[A] long-continued and extensive drought has existed in certain portions of the State of Texas, resulting in a failure of crops and consequent distress and destitution. [2]

Though there has been some difference in statements concerning the extent of the people’s needs in the localities thus affected, there seems to be no doubt that there has existed a condition calling for relief; and I am willing to believe that, notwithstanding the aid already furnished, a donation of seed-grain to the farmers located in this region, to enable them to put in new crops, would serve to avert a continuance or return of an unfortunate blight. [3]

And yet I feel obliged to withhold my approval of the plan as proposed by this bill, to indulge a benevolent and charitable sentiment through the appropriation of public funds for that purpose. [4]

I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the general government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit. A prevalent tendency to disregard the limited mission of this power and duty should, I think, be steadfastly resisted, to the end that the lesson should be constantly enforced that, though the people support the government, the government should not support the people. [5]

The friendliness and charity of our countrymen can always be relied upon to relieve their fellow citizens in misfortune. This has been repeatedly and quite lately demonstrated. Federal aid in such cases encourages the expectation of paternal care on the part of the government and weakens the sturdiness of our national character, while it prevents the indulgence among our people of that kindly sentiment and conduct which strengthens the bonds of a common brotherhood. [6]

It is within my personal knowledge that individual aid has, to some extent, already been extended to the sufferers mentioned in this bill. The failure of the proposed appropriation of ten thousand dollars additional, to meet their remaining wants, will not necessarily result in continued distress if the emergency is fully made known to the people of the country. [7]

–Grover Cleveland
Directions: After reading Handout A and Handout B, answer the questions below.

1. List three ways that President Cleveland worked to make the federal government less partisan and more efficient.

2. Why did Cleveland veto so many Civil War pension claims?

3. Why did Cleveland veto the Texas Seed Bill?

4. Why did the president adhere to the Constitution during a crisis?

5. How would you assess Cleveland’s understanding that his primary role was to stop bad laws rather than promote good ones?

6. What does President Cleveland state that the distribution of seeds would do in paragraph 3 of the Veto Message?

7. How does he describe the intentions of the Texas Seed bill in paragraph 4 of the Veto Message?

8. What reason does he give for his veto in paragraph 5 of the Veto Message?

9. What reason does he give for his veto in paragraph 6 of the Veto Message?

10. What does he says he expects from “the people of the country” in paragraph 7 of the Veto Message?

11. Why would the president adhere to the Constitution in a crisis?

12. When, if ever, should the president set aside limits on the Constitution to relieve human suffering?

13. Do you think a bill like the Texas Seed Bill would likely be vetoed today? Why or why not?

14. When individuals give money to charity, who decides which charities will receive money? When individuals give money to the government to use for direct assistance, who decides which charities will receive money?

15. When government spends the public’s money for direct assistance, how does that change the way individuals experience helping others? Does it harm the “bonds of a common brotherhood” that Cleveland spoke of?

16. How would you know if any of Cleveland’s warnings about the “expectation of paternal care on the part of government” government have come true?
Forty-Ninth Congress of the United States of America;

At the Second Session, Begun and held at the City of Washington on Monday, the sixth day of December, one thousand eight hundred and eighty-six

An act to regulate Commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid...

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

Sec. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person,
company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this act shall according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connection therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Sec. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: \textit{Provided, however}, That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

Sec. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Sec. 6. That every common carrier subject to the provisions of this act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this act...

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep for public inspection, at every depot where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment...

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days’ public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly
indicated upon the schedules in force at the time and kept for public inspection...

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party...

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated or wherein such offense may be committed, and if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act...

Sec. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act...

Sec. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction...

Sec. 11. That a Commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate...Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this
act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

Sec. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this act the Commission shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section...

Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found...

Sec. 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission..

Sec. 16. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable...

Sec. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner
in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information...

**Sec. 21.** That the Commission shall, on or before the first day of December in each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed as are the other reports issued from the Interior Department...

Approved, February 4, 1887.
Handout E: The Sherman Antitrust Act (1890)

Fifty-first Congress of the United States of America, At the First Session,

Begun and held at the City of Washington on Monday, the second day of December, one thousand eight hundred and eighty-nine.

An act to protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. Every contract, combination in the form of trust or other- wise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, at the discretion of the court.

Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Sec. 5. Whenever it shall appear to the court before which any proceeding under section four...
of this act may be pending, that the ends of justice
require that other parties should be brought
before the court, the court may cause them to be
summoned, whether they reside in the district
in which the court is held or not; and subpoenas
to that end may be served in any district by the
marshal thereof.

Sec. 6. Any property owned under any contract or
by any combination, or pursuant to any conspiracy
(and being the subject thereof) mentioned in
section one of this act, and being in the course of
transportation from one State to another, or to a
foreign country, shall be forfeited to the United
States, and may be seized and condemned by
like proceedings as those provided by law for the
forfeiture, seizure, and condemnation of property
imported into the United States contrary to law.

Sec. 7. Any person who shall be injured in his
business or property by any other person or
corporation by reason of anything forbidden
or declared to be unlawful by this act, may sue
therefor in any circuit court of the United States
in the district in which the defendant resides
or is found, without. respect to the amount in
controversy, and shall recover three fold the
damages by him sustained, and the costs of suit,
including a reasonable attorney’s fee.

Sec. 8. That the word “person,” or “persons,”
wherever used in this act shall be deemed to
include corporations and associations existing
under or authorized by the laws of either the
United States, the laws of any of the Territories,
the laws of any State, or the laws of any foreign
country.

Approved, July 2, 1890.
Handout A: Sixteenth, Seventeenth, Eighteenth, and Twenty-First Amendments

Sixteenth Amendment (1913)
The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census of enumeration.

1. **How did the power of the federal government change with the passage and ratification of Sixteenth Amendment?**

2. **Why do you think the federal government believed that the Sixteenth Amendment was necessary?**

Seventeenth Amendment (1913)
The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

1. **How did the power of the federal government change with the passage and ratification of Seventeenth Amendment?**

2. **Why do you think the federal government believed that the Seventeenth Amendment was necessary?**

Eighteenth Amendment (1919)

**Section 1.** After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

**Section 2.** The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.
Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Twenty-First Amendment (1933)

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

1. How did the power of the federal government change with the passage and ratification of the Eighteenth Amendment?

2. Why do you think the federal government believed that the Eighteenth Amendment was necessary?

3. Why was the Twenty-First Amendment passed and ratified?

4. Why do you think the federal government believe that the Twenty-First Amendment was necessary?
Handout B: Excerpts from The Federal Reserve Act (1913)

An Act To provide for the establishment of Federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes.

SEC. 2. As soon as practicable, the Secretary of the Treasury, the Secretary of Agriculture and the Comptroller of the Currency, acting as “The Reserve Bank Organization Committee,” shall designate not less than eight nor more than twelve cities to be known as Federal reserve cities, and shall divide the continental United States, excluding Alaska, into districts, each district to contain only one of such Federal reserve cities... Provided, That the districts shall be apportioned with due regard to the convenience and customary course of business and shall not necessarily be coterminous with any State or States... Such districts shall be known as Federal reserve districts and may be designated by number...

Said organization committee...shall supervise the organization in each of the cities designated of a Federal reserve bank, which shall include in its title the name of the city in which it is situated, as “Federal Reserve Bank of Chicago.”

Under regulations to be prescribed by the organization committee, every national banking association in the United States is hereby required, and every eligible bank in the United States and every trust company within the District of Columbia, is hereby authorized to signify in writing, within sixty days after the passage of this Act, its acceptance of the terms and provisions hereof. When the organization committee shall have designated the cities in which Federal reserve banks are to be organized, and fixed the geographical limits of the Federal reserve districts, every national banking association within that district shall be required within thirty days after notice from the organization committee, to subscribe to the capital stock of such Federal reserve bank in a sum equal to six per centum of the paid-up capital stock and surplus of such bank...

Any national bank failing to signify its acceptance of the terms of this Act within the sixty days aforesaid, shall cease to act as a reserve agent, upon thirty days’ notice, to be given within the discretion of the said organization committee or of the Federal Reserve Board.

Should any national banking association in the United States now organized fail within one year after the passage of this Act to become a member bank or fail to comply with any of the provisions of this Act applicable thereto, all of the rights, privileges, and franchises of such association granted to it under the national-bank Act, or under the provision of this Act, shall be thereby forfeited...

No individual, copartnership, or corporation other than a member bank of its district shall be permitted to subscribe for or to hold at any time more than $20,000 par value of stock in any Federal reserve bank. Such stock shall be known as public stock and may be transferred on the books of the Federal reserve bank by the chairman of the board of directors of such bank...

SEC. 3. Each Federal reserve bank shall establish branch banks within the Federal reserve district in which it is located and may do so in the district of any Federal reserve bank which may have been suspended.
Handout A: Franklin D. Roosevelt Fireside Chat “Outlining the New Deal Program”

May 7, 1933

Radio Address of the President

On a Sunday night a week after my Inauguration I used the radio to tell you about the banking crisis and the measures we were taking to meet it. I think that in that way I made clear to the country various facts that might otherwise have been misunderstood and in general provided a means of understanding which did much to restore confidence.

Tonight, eight weeks later, I come for the second time to give you my report—in the same spirit and by the same means to tell you about what we have been doing and what we are planning to do.

Two months ago we were facing serious problems. The country was dying by inches. It was dying because trade and commerce had declined to dangerously low levels; prices for basic commodities were such as to destroy the value of the assets of national institutions such as banks, savings banks, insurance companies, and others. These institutions, because of their great needs, were foreclosing mortgages, calling loans, refusing credit. Thus there was actually in process of destruction the property of millions of people who had borrowed money on that property in terms of dollars which had had an entirely different value from the level of March, 1933. That situation in that crisis did not call for any complicated consideration of economic panaceas or fancy plans. We were faced by a condition and not a theory.

There were just two alternatives: The first was to allow the foreclosures to continue, credit to be withheld and money to go into hiding, and thus forcing liquidation and bankruptcy of banks, railroads and insurance companies and a recapitalizing of all business and all

Franklin D. Roosevelt Fireside Chat “Outlining the New Deal Program” Notes

Franklin Roosevelt used his “Fireside Chats” to speak to the nation over the radio. In this address, he hopes to explain the measures that will be taken to righting the banking crisis.

Two months ago, trade and commerce had declines, prices were so low that they were destroying the value of banks, insurance companies, and others. These companies were foreclosing on mortgages, calling for loans to be paid, and refusing credit to people.

There were two plans. The first was to allow the foreclosures and refusal of credit to continue that might lead to the bankruptcy of banks, railroads, and insurance companies.
property on a lower level. This alternative meant a continuation of what is loosely called “deflation”, the net result of which would have been extraordinary hardship on all property owners and, incidentally, extraordinary hardships on all persons working for wages through an increase in unemployment and a further reduction of the wage scale.

It is easy to see that the result of this course would have not only economic effects of a very serious nature but social results that might bring incalculable harm. Even before I was inaugurated I came to the conclusion that such a policy was too much to ask the American people to bear. It involved not only a further loss of homes, farms, savings and wages but also a loss of spiritual values—the loss of that sense of security for the present and the future so necessary to the peace and contentment of the individual and of his family. When you destroy these things you will find it difficult to establish confidence of any sort in the future. It was clear that mere appeals from Washington for confidence and the mere lending of more money to shaky institutions could not stop this downward course. A prompt program applied as quickly as possible seemed to me not only justified but imperative to our national security. The Congress, and when I say Congress I mean the members of both political parties, fully understood this and gave me generous and intelligent support. The members of Congress realized that the methods of normal times had to be replaced in the emergency by measures which were suited to the serious and pressing requirements of the moment. There was no actual surrender of power, Congress still retained its constitutional authority and no one has the slightest desire to change the balance of these powers. The function of Congress is to decide what has to be done and to select the appropriate agency to carry out its will. This policy it has strictly adhered to. The only thing that has been happening has been to designate the President as the agency to carry out certain of the purposes of the Congress. This was constitutional and in keeping with the past American tradition.

This would mean a continuation of deflation [a decrease in the prices of goods and services] that would lead to hardships for property owners and a reduction in wages.

If this plan had been following it would bring about economic and social effects that Roosevelt believed was too much to ask of the American people. It would involve a loss of homes, farms, savings, wages, and a sense of security. If those items were lost, it would be hard to have confidence in the future.

Congress gave him their support and realized that the normal methods had to be replaced in such an emergency.

There was no surrender of power from the Congress. They maintained their constitutional authority and the balance of powers has been retained. Congress needs to decide what needs to be done and what agency should carry out the plans. They have designated the president as the agency to carry out the plans.
The legislation which has been passed or in the process of enactment can properly be considered as part of a well-grounded plan.

First, we are giving opportunity of employment to one-quarter of a million of the unemployed, especially the young men who have dependents, to go into the forestry and flood prevention work. This is a big task because it means feeding, clothing and caring for nearly twice as many men as we have in the regular army itself. In creating this civilian conservation corps we are killing two birds with one stone. We are clearly enhancing the value of our natural resources and second, we are relieving an appreciable amount of actual distress. This great group of men have entered upon their work on a purely voluntary basis, no military training is involved and we are conserving not only our natural resources but our human resources. One of the great values to this work is the fact that it is direct and requires the intervention of very little machinery.

Second, I have requested the Congress and have secured action upon a proposal to put the great properties owned by our Government at Muscle Shoals to work after long years of wasteful inaction, and with this a broad plan for the improvement of a vast area in the Tennessee Valley. It will add to the comfort and happiness of hundreds of thousands of people and the incident benefits will reach the entire nation.

Next, the Congress is about to pass legislation that will greatly ease the mortgage distress among the farmers and the home owners of the nation, by providing for the easing of the burden of debt now bearing so heavily upon millions of our people. Our next step in seeking immediate relief is a grant of half a billion dollars to help the states, counties and municipalities in their duty to care for those who need direct and Immediate relief. The Congress also passed legislation authorizing the sale of beer in such states as desired. This has already resulted in considerable reemployment and, incidentally, has provided much needed tax revenue.

We are planning to ask the Congress for legislation to

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Roosevelt has requested that Congress put a plan in place to improve the Tennessee Valley to add to the comfort and happiness of many people.

Legislation that Congress will pass will decrease the mortgage issues and ease the burden of dept. They will also grant the states a half billion dollars. They have already passed legislation that allows the sale of beer [this was during the Prohibition era] and offers reemployment and tax money.

We ask that Congress also pass
enable the Government to undertake public works, thus stimulating directly and indirectly the employment of many others in well-considered projects.

Further legislation has been taken up which goes much more fundamentally into our economic problems. The Farm Relief Bill seeks by the use of several methods, alone or together, to bring about an increased return to farmers for their major farm products, seeking at the same time to prevent in the days to come disastrous over-production which so often in the past has kept farm commodity prices far below a reasonable return. This measure provides wide powers for emergencies. The extent of its use will depend entirely upon what the future has in store.

Well-considered and conservative measures will likewise be proposed which will attempt to give to the industrial workers of the country a more fair wage return, prevent cut-throat competition and unduly long hours for labor, and at the same time to encourage each industry to prevent over-production.

Our Railroad Bill falls into the same class because it seeks to provide and make certain definite planning by the railroads themselves, with the assistance of the Government, to eliminate the duplication and waste that is now resulting in railroad receiverships and continuing operating deficits.

I am certain that the people of this country understand and approve the broad purposes behind these new governmental policies relating to agriculture and industry and transportation. We found ourselves faced with more agricultural products than we could possibly consume ourselves and surpluses which other nations did not have the cash to buy from us except at prices ruinously low. We have found our factories able to turn out more goods than we could possibly consume, and at the same time we were faced with a falling export demand. We found ourselves with more facilities to transport goods and crops than there were goods and crops to be transported. All of this has been caused in large part by a complete lack of planning and a complete lack of foresight. This bill will give wide powers for emergencies.

Other bills include the Farm Relief Bill, which allow farmers to increase their returns and prevent over-production.

Other measures will be proposed to give industrial workers a fairer wage and prevent cut-throat completion, long hours, and over-production.

The Railroad Bill will provide definite planning by the railroads with government assistance to reduce duplication and waste.

Roosevelt believes that the people will understand the purposes behind the new policies relating to agriculture, industry, and transportation. It is important that we don’t over-produce goods due to a lack of planning.
failure to understand the danger signals that have been flying ever since the close of the World War. The people of this country have been erroneously encouraged to believe that they could keep on increasing the output of farm and factory indefinitely and that some magician would find ways and means for that increased output to be consumed with reasonable profit to the producer.

Today we have reason to believe that things are a little better than they were two months ago. Industry has picked up, railroads are carrying more freight, farm prices are better, but I am not going to indulge in issuing proclamations of over enthusiastic assurance. We cannot bally-ho ourselves back to prosperity. I am going to be honest at all times with the people of the country. I do not want the people of this country to take the foolish course of letting this improvement come back on another speculative wave. I do not want the people to believe that because of unjustified optimism we can resume the ruinous practice of increasing our crop output and our factory output in the hope that a kind providence will find buyers at high prices. Such a course may bring us immediate and false prosperity but it will be the kind of prosperity that will lead us into another tailspin.

It is wholly wrong to call the measure that we have taken Government control of farming, control of industry, and control of transportation. It is rather a partnership between Government and farming and industry and transportation, not partnership in profits, for the profits would still go to the citizens, but rather a partnership in planning and partnership to see that the plans are carried out.

Let me illustrate with an example. Take the cotton goods industry. It is probably true that ninety per cent of the cotton manufacturers would agree to eliminate starvation wages, would agree to stop long hours of employment, would agree to stop child labor, would agree to prevent an overproduction that would result in unsalable surpluses. But, what good is such an agreement if the other ten per cent of cotton manufacturers pay starvation wages, require long hours, employ children in their mills and turn out burdensome

Things are a little better than they were two months ago: industry, railroads, and farms have improved. But Roosevelt doesn’t want these improvements to cause the same problems as before.

Government has not taken control of farming, industry or transportation. It is a partnership between these groups and government.

For example, 90% of the cotton industry would agree to eliminate low wages, long hours, child labor and overproduction.

But if the other 10% do not, they could sell their goods more cheaply and the 90% would have to meet their prices by not complying with these agreements.
surpluses? The unfair ten per cent could produce goods so cheaply that the fair ninety per cent would be compelled to meet the unfair conditions. Here is where government comes in. Government ought to have the right and will have the right, after surveying and planning for an industry to prevent, with the assistance of the overwhelming majority of that industry, unfair practice and to enforce this agreement by the authority of government. The so-called anti-trust laws were intended to prevent the creation of monopolies and to forbid unreasonable profits to those monopolies. That purpose of the anti-trust laws must be continued, but these laws were never intended to encourage the kind of unfair competition that results in long hours, starvation wages and overproduction.

The same principle applies to farm products and to transportation and every other field of organized private industry.

We are working toward a definite goal, which is to prevent the return of conditions which came very close to destroying what we call modern civilization. The actual accomplishment of our purpose cannot be attained in a day. Our policies are wholly within purposes for which our American Constitutional Government was established 150 years ago.

I know that the people of this country will understand this and will also understand the spirit in which we are undertaking this policy. I do not deny that we may make mistakes of procedure as we carry out the policy. I have no expectation of making a hit every time I come to bat. What I seek is the highest possible batting average, not only for myself but for the team. Theodore Roosevelt once said to me: “If I can be right 75 per cent of the time I shall come up to the fullest measure of my hopes.”

Much has been said of late about Federal finances and inflation, the gold standard, etc. Let me make the facts very simple and my policy very clear. In the first place, government credit and government currency are really one and the same thing. Behind government bonds there is only a promise to pay. Behind government

Therefore, the government has the right to prevent unfair practices. That is why antitrust laws were passed and must be continued.

The same principle applies to all other private industries.

They are working toward a goal to prevent the return of the conditions that caused the problems. According to Roosevelt, these policies are within the purposes which the Constitution was established.

They may make mistakes, but they will do the best they can.

Government credit and currency are the same thing. Each are a promise to pay.
currency we have, in addition to the promise to pay, a reserve of gold and a small reserve of silver. In this connection it is worth while remembering that in the past the government has agreed to redeem nearly thirty billions of its debts and its currency in gold, and private corporations in this country have agreed to redeem another sixty or seventy billions of securities and mortgages in gold. The government and private corporations were making these agreements when they knew full well that all of the gold in the United States amounted to only between three and four billions and that all of the gold in all of the world amounted to only about eleven billions.

If the holders of these promises to pay started to demand gold the first comers would get gold for a few days and they would amount to about one twenty-fifth of the holders of the securities and the currency. The other twenty-four people out of twenty-five, who did not happen to be at the top of the line, would be told politely that there was no more gold left. We have decided to treat all twenty-five in the same way in the interest of justice and the exercise of the constitutional powers of this government. We have placed every one on the same basis in order that the general good may be preserved.

Nevertheless, gold, and to a partial extent silver, are perfectly good bases for currency and that is why I decided not to let any of the gold now in the country go out of it.

A series of conditions arose three weeks ago which very readily might have meant, first, a drain on our gold by foreign countries, and secondly, as a result of that, a flight of American capital, in the form of gold, out of our country. It is not exaggerating the possibility to tell you that such an occurrence might well have taken from us the major part of our gold reserve and resulted in such a further weakening of our government and private credit as to bring on actual panic conditions and the complete stoppage of the wheels of industry.

The Administration has the definite objective of raising commodity prices to such an extent that those who
have borrowed money will, on the average, be able to repay that money in the same kind of dollar which they borrowed. We do not seek to let them get such a cheap dollar that they will be able to pay back a great deal less than they borrowed. In other words, we seek to correct a wrong and not to create another wrong in the opposite direction. That is why powers are being given to the Administration to provide, if necessary, for an enlargement of credit, in order to correct the existing wrong. These powers will be used when, as, and if it may be necessary to accomplish the purpose.

Hand in hand with the domestic situation which, of course, is our first concern, is the world situation, and I want to emphasize to you that the domestic situation is inevitably and deeply tied in with the conditions in all of the other nations of the world. In other words, we can get, in all probability, a fair measure of prosperity return in the United States, but it will not be permanent unless we get a return to prosperity all over the world.

In the conferences which we have held and are holding with the leaders of other nations, we are seeking four great objectives. First, a general reduction of armaments and through this the removal of the fear of invasion and armed attack, and, at the same time, a reduction in armament costs, in order to help in the balancing of government budgets and the reduction of taxation. Secondly, a cutting down of the trade barriers, in order to re-start the flow of exchange of crops and goods between nations. Third, the setting up of a stabilization of currencies, in order that trade can make contracts ahead. Fourth, the reestablishment of friendly relations and greater confidence between all nations.

Our foreign visitors these past three weeks have responded to these purposes in a very helpful way. All of the Nations have suffered alike in this great depression. They have all reached the conclusion that each can best be helped by the common action of all. It is in this spirit that our visitors have met with us and discussed our common problems. The international conference that lies before us must succeed. The future of the world

borrowed money will be able to repay it.

These powers are given to the Administration to enlarge the credit of the nation.

We are also concerned about the world situation, and the world need to return to prosperity in order for the United States to do so.

There will be a reduction in armaments and therefore armament costs to balance the budget and reduce taxes. There will also be a reduction in trade barriers, stabilization of currencies, and reestablishment of relations with other nations.

All nations have suffered in this depression and each can be helped by the common action of all. The future of the word demands success.
demands it and we have each of us pledged ourselves to the best joint efforts to this end.

To you, the people of this country, all of us, the Members of the Congress and the members of this Administration owe a profound debt of gratitude. Throughout the depression you have been patient. You have granted us wide powers, you have encouraged us with a wide-spread approval of our purposes. Every ounce of strength and every resource at our command we have devoted to the end of justifying your confidence. We are encouraged to believe that a wise and sensible beginning has been made. In the present spirit of mutual confidence and mutual encouragement we go forward.

Critical Thinking Questions

1. Why did President Roosevelt want to begin the New Deal programs?
2. What programs did Roosevelt believe were important to fight the Great Depression?
3. How did Roosevelt address the shift in the balance of power between the legislative and executive branches?
4. Based on your understanding of the Constitution and the gravity of the Great Depression, do you believe the federal government had the power to institute the programs Roosevelt recommended in this Fireside Chat? Why or why not?
Handout B: New Deal Programs

Choose one of the following New Deal programs and create a presentation in which you explain the provisions of the program, which branch of the government would administer the program, and the intended length of the program.

- Agricultural Adjustment Act
- Civilian Conservation Corps
- Federal Communication Act
- Federal Emergency Relief Administration
- Federal Trade Commission
- Indian Reorganization Act
- National Labor Relations (Wagner) Act
- National Industrial Recovery Act
- Public Works Association
- Social Security Act
- Tennessee Valley Authority
- Works Progress Administration
Handout C: Franklin D. Roosevelt’s Press Conference about the Composition of the Supreme Court, February 5, 1937

I have a somewhat important matter to take up with you today. And I am asking that this message of today be held in very strict confidence until the message is released in accordance with the wording of the release on the press copies that will be given to you in a few moments. It is also requested that nobody reveal what is said or the text of the material to any person outside of the employ, outside of those in your own organization, until the time of the release, until it is actually read in either the Senate or the House, whichever one reads it first. Copies will be given to you as you go out and don’t anybody go out until that time...

As you know, for a long time the subject of constitutionality of laws has been discussed; and for a good many months now I have been working with a small group in going into what I have thought of as the fundamentals of the subject rather than those particular details which make the headlines.

In this review of the Federal Judiciary we have come to the very definite conclusion that there is required the same kind of reorganization of the Judiciary as has been recommended to this Congress for the Executive branch of the Government.

As a part of it, I have received from the Attorney General a letter which you will also get and of which I shall just touch the high spots. It is a part of the message.

My dear Mr. President:

Delay in the administration of justice is the outstanding defect of our federal judicial system. It has been a cause of concern to practically every one of my predecessors in office. It has exasperated the bench, the bar, the business community and the public.

He goes on and speaks of the fact that the litigant conceives the judge as one promoting justice through the mechanism of the Courts. He assumes that the directing power of the judge is exercised over its officers from the time a case is filed with the clerk of the court. He is entitled to assume that the judge is pressing forward litigation in the full recognition of the principle that “justice delayed is justice denied.” It is a mockery of justice to say to a person when he files suit, that he may receive a decision years later. Under a properly ordered system rights should be determined promptly. The course of litigation should be measured in months and not in years.

Yet in some jurisdictions, the delays in the administration of justice are so interminable that to institute suit is to embark on a life-long adventure.

Many persons submit to acts of injustice rather than resort to the courts. Inability to secure a prompt judicial adjudication leads to improvident and unjust settlements. Moreover, the time factor is an open invitation to those who are disposed to institute unwarranted litigation or interpose unfounded defenses in the hope of forcing an
adjustment which could not be secured upon the merits. This situation frequently results in extreme hardships. The small business man or the litigant of limited means labors under a grave and constantly increasing disadvantage because of his inability to pay the price of justice.

Statistical data—very carefully collected from every district—indicate that in many districts a disheartening and unavoidable interval must elapse between the date that issue is joined in a pending case and the time when it can be reached for trial in due course. These computations do not take into account the delays that occur in the preliminary stages of litigation or the postponements after a case might normally be expected to be heard.

The evil is a growing one. The business of the courts is continually increasing in volume, importance, and complexity. The average case load borne by each judge has grown nearly fifty percent since 1913, when the District Courts were first organized on their present basis. When the courts are working under such pressure it is inevitable that the character of their work must suffer.

The number of new cases offset those that are disposed of, so that the Courts are unable to decrease the enormous back-log of undigested matters. More than fifty thousand pending cases (exclusive of bankruptcy proceedings) overhang the federal dockets—a constant menace to the orderly processes of justice. Whenever a single case requires a protracted trial, the routine business of the court is further neglected. It is an intolerable situation and we should make shift to amend it.

Efforts have been made from time to time to alleviate some of the conditions that contribute to the slow rate of speed with which causes move through the Courts. The Congress has recently conferred on the Supreme Court the authority to prescribe rules of procedure after verdict in criminal cases and the power to adopt and promulgate uniform rules of practice for civil actions at law in the District Courts. It has provided terms of Court in certain places at which federal Courts had not previously convened. A small number of judges have been added from time to time.

Despite these commendable accomplishments, sufficient progress has not been made. Much remains to be done in developing procedure and administration, but this alone will not meet modern needs. The problem must be approached in a more comprehensive fashion, if the United States is to have a judicial system worthy of the nation. Reason and necessity require the appointment of a sufficient number of judges to handle the business of the federal Courts. These additional judges should be of a type and age which would warrant us in believing that they would vigorously attack their dockets, rather than permit their dockets to overwhelm them.

The cost of additional personnel should not deter us. It must be borne in mind that the expense of maintaining the judicial system constitutes hardly three-tenths of one percent of the cost of maintaining the federal establishment. While the estimates for the current fiscal year aggregate over $23,000,000 for the maintenance of the legislative branch of the government, and over $2,100,000,000 for the permanent agencies of the executive branch, the estimated cost of maintaining the judiciary is only about $6,500,000. An increase in the judicial personnel, which I earnestly recommend, would result in a hardly perceptible percentage of increase in the total annual budget.

This result should not be achieved, however, merely by creating new judicial positions in specific circuits or districts. The reform should
be effectuated on the basis of a consistent system which would revitalize our whole judicial structure and assure the activity of judges at places where the accumulation of business is greatest. As congestion is a varying factor and cannot be foreseen, the system should be flexible and should permit the temporary assignment of judges to points where they appear to be most needed. The newly created personnel should constitute a mobile force, available for service in any part of the country at the assignment and direction of the Chief Justice. A functionary might well be created to be known as Proctor, or by some other suitable title, to be appointed by the Supreme Court and to act under its direction, charged with the duty of continuously keeping informed as to the state of federal judicial business throughout the United States and of assisting the Chief Justice in assigning judges to pressure areas.

He then appends statistical information. The Attorney General then says, The time has come when further legislation is essential.

The statistical information shows, for example, that while we have added judges since 1913— we have increased them from 92 to 154—the criminal and civil cases other than bankruptcy have increased from 25,000 to 75,000, the average number of cases filed per judge from 276 per judge to 484 per judge. It has nearly doubled. The number of bankruptcy proceedings has increased from 20,000 to 60,000.

The second table gives the case load in the courts. The cases filed and terminated show that over the past six years we have made practically no progress in cutting down the number of cases, this back-log of cases in the Federal courts.

The message itself is fairly long, and has to be long on a subject like this. I will try to do a little high spotting as I go through it.

I have recently called the attention of the Congress to the clear need for a comprehensive program to reorganize the administrative machinery of the Executive Branch of our Government. I now make a similar recommendation to the Congress in regard to the Judicial Branch of the Government, in order that it also may function in accord with modern necessities.

The Constitution provides that the President “shall from time to time give to the Congress information of the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient.” No one else is given a similar mandate. It is therefore the duty of the President to advise the Congress in regard to the Judiciary whenever he deems such information or recommendation necessary.

I address you for the further reason that the Constitution vests in the Congress direct responsibility in the creation of courts and judicial offices and in the formulation of rules of practice and procedure. It is, therefore, one of the definite duties of the Congress constantly to maintain the effective functioning of the Federal Judiciary.

The Judiciary has often found itself handicapped by insufficient personnel with which to meet a growing and more complex business. It is true that the physical facilities of conducting the business of the courts have been greatly improved, in recent years, through the erection of suitable quarters, the provision of adequate libraries and the addition of subordinate court officers. But in many ways these are merely the trappings of judicial office. They play a minor part in the processes of justice.

Since the earliest days of the Republic, the problem of the personnel of the courts has needed the attention of the Congress. For example, from
the beginning, over repeated protests to President Washington, the Justices of the Supreme Court were required to “ride Circuit” and, as Circuit Justices, to hold trials throughout the length and breadth of the land—a practice which endured over a century.

And I might add that riding Circuit in those days meant riding on horseback. It might be called a pre-horse and buggy era. That is not in the message.

In almost every decade since 1789, changes have been made by the Congress whereby the numbers of judges and the duties of judges in federal courts have been altered in one way or another. The Supreme Court was established with six members of 1789; it was reduced to five in 1801; it was increased to seven in 1807; it was increased to nine in 1837; it was increased to ten in 1863; it was reduced to seven in 1866; it was increased to nine in 1869.

This is all by statute.

The simple fact is that today a new need for legislative action arises because the personnel of the Federal Judiciary is insufficient to meet the business before them. A growing body of our citizens complain of the complexities, the delays, and the expense of litigation in United States Courts.

I then mention the letter from the Attorney General.

Delay in any court results in injustice.

Now we will take up the case of the lower courts showing delay:

It makes lawsuits a luxury available only to the few who can afford them or who have property interests to protect which are sufficiently large to repay the cost. Poorer litigants are compelled to abandon valuable rights or to accept inadequate or unjust settlements because of sheer inability to finance or to await the end of a long litigation. Only by speeding up the processes of the law and thereby reducing their cost, can we eradicate the growing impression that the courts are chiefly a haven for the well-to-do.

Now we come to the next, the courts of appeal.

Delays in the determination of appeals have the same effect. Moreover, if trials of original actions are expedited and existing accumulations of cases are reduced, the volume of work imposed on the Circuit Courts of Appeals will further increase.

Then we come to the highest court:

The attainment of speedier justice in the courts below will enlarge the task of the Supreme Court itself. And still more work would be added by the recommendation which I make later in this message for the quicker determination of constitutional questions by the highest court.

Even at the present time the Supreme Court is laboring under a heavy burden. Its difficulties in this respect were superficially lightened some years ago by authorizing the court, in its discretion, to refuse to hear appeals in many classes of cases. This discretion was so freely exercised that in the last fiscal year, although 867 petitions for review were presented to the Supreme Court, it declined to hear 717 cases.

That is a tremendously important fact. As you know, any litigant seeking to appeal to the Supreme Court takes it there on certiorari. That is a certiorari process and out of 867 cases the Supreme Court last year turned down 727. It declined without an opinion even to hear them.

If petitions in behalf of the Government are excluded, it appears that the court permitted private litigants to prosecute appeals in only 108 cases out of 803 applications. Many of the refusals were doubtless warranted. But can it be said that
full justice is achieved when a court is forced by
the sheer necessity of keeping up with its business
to decline, without even an explanation, to hear
87 percent of the cases presented to it by private
litigants.

That is an amazing statement.

It seems clear, therefore, that the necessity of
relieving present congestion extends to the
enlargement of the capacity of all the federal
courts.

In other words, let us apply the same rule from
top to bottom.

A part of the problem of obtaining a sufficient
number of judges to dispose of cases is the
capacity of the judges themselves. This brings
forward the question of aged or infirm judges—a
subject of delicacy and yet one which requires
frank discussion.

In the federal courts there are in all 237 life tenure
permanent judgeships.

There are a very small number of judges whose
places are not to be filled when they die. They are
really temporary judges.

Twenty-five of them are now held by judges
over seventy years of age and eligible to leave
the bench on full pay. Originally no pension
or retirement allowance was provided by the
Congress. When after eighty years of our national
history—that was in 1869—the Congress made
provision for pensions, it found a well-entrenched
tradition among judges to cling to their posts, in
many instances far beyond their years of physical
or mental capacity. Their salaries were small. As
with other men, responsibilities and obligations
accumulated. No alternative had been open to
them except to attempt to perform the duties of
their offices to the very edge of the grave.

I am talking about 1869.

In exceptional cases, of course, judges, like other
men, retain to an advanced age full mental
and physical vigor. Those not so fortunate are
often unable to perceive their own infirmities.
“They seem to be tenacious of the appearance of
adequacy.”

That is a quotation from a very important justice.
It is in quotes. You will have to find out who said
it. I am not going to tell you.

The voluntary retirement law of 1869 provided,
therefore, only a partial solution. That law, still in
force, has not proved effective in inducing aged
judges to retire on a pension.

This result had been foreseen in the debates when
the measure was being considered. It was then
proposed that when a judge refused to retire upon
reaching the age of seventy, an additional judge
should be appointed to assist in the work of the
court. The proposal passed the House but was
eliminated in the Senate.

With the opening of the twentieth century, and
the great increase of population and commerce,
and the growth of a more complex type of
litigation, similar proposals were introduced in
the Congress. To meet the situation, in 1913,
1914, 1915 and 1916, the Attorneys General then
in office—I will end the suspense by saying that it
was McReynolds and Gregory—recommended to
the Congress that when a district or a circuit judge
failed to retire at the age of seventy, an additional
judge be appointed in order that the affairs of
the court might be promptly and adequately
discharged.

In 1919 a law was finally passed providing that
the President “may” appoint additional district
and circuit judges, but only upon a finding that
the incumbent judge over seventy “is unable to
discharge efficiently all the duties of his office
by reason of mental or physical disability of
permanent character.” The discretionary and
The indefinite nature of this legislation has rendered it ineffective. No President should be asked to determine the ability or disability of any particular judge.

The duty of a judge involves more than presiding or listening to testimony or arguments.

And I go on and talk about the complexity of the modern average case, that it has increased tremendously in the last twenty or twenty-five years.

Modern complexities call also for a constant infusion of new blood in the courts, just as it is needed in executive functions of the Government and in private business. A lowered mental or physical vigor leads men to avoid an examination of complicated and changed conditions. Little by little, new facts become blurred through old glasses fitted, as it were, for the needs of another generation; older men, assuming that the scene is the same as it was in the past, cease to explore or inquire into the present or the future.

We have recognized this truth in the civil service of the nation and of many states by compelling retirement on pay at the age of seventy. We have recognized it in the Army and Navy by retiring officers at the age of sixty-four. A number of states have recognized it by providing in their constitutions for compulsory retirement of aged judges.

Life tenure of judges, assured by the Constitution, was designed to place the courts beyond temptations or influences which might impair their judgments: it was not intended to create a static judiciary. A constant and systematic addition of younger blood will vitalize the courts and better equip them to recognize and apply the essential concepts of justice in the light of the needs and the facts of an ever-changing world.

It is obvious, therefore, from both reason and experience, that some provision must be adopted, which will operate automatically to supplement the work of older judges and accelerate the work of the court.

Now, some recommendations.

I, therefore, earnestly recommend that the necessity of an increase in the number of judges be supplied by legislation providing for the appointment of additional judges in all federal courts, without exception, where there are incumbent judges of retirement age who do not choose to retire or to resign. If an elder judge is not in fact incapacitated, only good can come from the presence of an additional judge in the crowded state of the dockets; if the capacity of an elder judge is in fact impaired, the appointment of an additional judge is indispensable. This seems to be a truth which cannot be contradicted.

I also recommend that the Congress provide machinery for taking care of sudden or long-standing congestion in the lower courts. The Supreme Court should be given power to appoint an administrative assistant who may be called a Proctor. He would be charged with the duty of watching the calendars and the business of all the courts in the federal system. The Chief Justice thereupon should be authorized to make a temporary assignment of any circuit or district judge hereafter appointed—

This would not apply to the members of the bench at the present time, only the new ones—in order that he may serve as long as needed in any circuit or district where the courts are in arrears.

I attach a carefully considered draft of a proposed bill, which, if enacted, would, I am confident, afford substantial relief. The proposed measure also contains a limit on the total number of judges who might thus be appointed and also a limit on the potential size of any one of our federal courts.
That bill, I might add, as I explained to the Chairmen of the Judiciary Committees of the House and Senate just now, is merely something for them to work on, as in any other case when any bill goes in. It is simply something for them to work on to save them trouble of trying to put the language together.

These proposals do not raise any issue of constitutional law. Some of you may, perhaps, realize why I said what I did in my annual message of January sixth.

They do not suggest any form of compulsory retirement for incumbent judges. Indeed, those who have reached the retirement age, but desire to continue their judicial work, would be able to do so under less physical and mental strain and would be able to play a useful part in relieving the growing congestion in the business of our courts. Among them are men of eminence and great ability whose services the Government would be loath to lose. If, on the other hand, any judge eligible for retirement should feel that his court would suffer because of an increase in its membership, he may retire or resign under already existing provisions of law if he wishes so to do. In this connection let me say that the pending proposal to extend to the Justices of the Supreme Court the same retirement privileges now available to other federal judges, has my entire approval.

You know what the situation is there. Any Circuit or District Judge may retire on full pay. A Supreme Court Justice can resign and get full pay. The only difference is that if he resigns and gets full pay, he is subject to changes in the income tax laws and things like that. This recommendation, would put him on the same status as the judges in the other courts.

One further matter requires immediate attention. This is the other important one.

We have witnessed the spectacle of conflicting decisions in both trial and appellate courts on the constitutionality of every form of important legislation.

This is concerned primarily with constitutional questions.

Such a welter of uncomposed differences of judicial opinion has brought the law, the courts, and, indeed, the entire administration of justice dangerously near to disrepute.

A federal statute is held legal by one judge in one district; it is simultaneously held illegal by another judge in another district. An act valid in one judicial circuit is invalid in another judicial circuit. Thus rights fully accorded to one group of citizens may be denied to others. As a practical matter this means that for periods running as long as one year or two years or three years—until final determination can be made by the Supreme Court—the law loses its most indispensable element—equality.

Moreover, during the long processes of preliminary motions, original trials, petitions for rehearings, appeals, reversals on technical grounds requiring re-trials, motions before the Supreme Court and the final hearing by the highest tribunal—during all this time labor, industry, agriculture, commerce and the Government itself go through an unconscionable period of uncertainty and embarrassment. And it is well to remember that during these long processes the normal operations of society and government are handicapped in many cases by differing and divided opinions in the lower courts and by the lack of any clear guide for the dispatch of business. Thereby our legal system is fast losing another essential of justice—certainty.

Finally, we find the processes of government itself brought to a complete stop from time to time by injunctions issued almost
automatically, sometimes even without notice to the Government, and not infrequently in clear violation of the principle of equity that injunctions should be granted only in those rare cases of manifest illegality and irreparable damage against which the ordinary course of the law offers no protection. Statutes which the Congress enacts are set aside or suspended for long periods of time, even in cases to which the Government is not a party.

In the uncertain state of the law, it is not difficult for the ingenious to devise novel reasons for attacking the validity of new legislation or its application. While these questions are laboriously brought to issue and debated through a series of courts, the Government must stand aside. It matters not that the Congress has enacted the law, that the Executive has signed it and that the administrative machinery is waiting to function. Government by injunction lays a heavy hand upon normal processes; and no important statute can take effect —against any individual or organization with the means to employ lawyers and engage in wide flung litigation—until it has passed through the whole hierarchy of the courts. Thus the judiciary, by postponing the effective date of Acts of the Congress, is assuming an additional function and is coming more and more to constitute a scattered, loosely organized and slowly operating third house of the National Legislature.

This state of affairs has come upon the nation gradually over a period of decades. In my annual message to this Congress I expressed some views and some hopes.

Now, as an immediate step, I recommend that the Congress provide that no decision, injunction, judgment or decree on any constitutional question be promulgated by any federal court without previous and ample notice to the Attorney General and an opportunity for the United States to present evidence and be heard. This is to prevent court action on the constitutionality of Acts of the Congress in suits between private individuals, where the Government is not a party to the suit, without giving opportunity to the Government of the United States to defend the law of the land.

That sounds like common sense.

I also earnestly recommend that in cases in which any court of first instance —That is the District Court—determines a question of constitutionality, the Congress provide that there shall be a direct and immediate appeal to the Supreme Court—It does not take away any right of any lower court to pass on constitutionality, but it provides for an immediate appeal to the Supreme Court, and that such cases—take precedence over all other matters pending in that court. Such legislation will, I am convinced, go far to alleviate the inequality, uncertainty and delay in the disposition of vital questions of constitutionality arising under our fundamental law.

My desire is to strengthen the administration of justice and to make it a more effective servant of public need. In the American ideal of government the courts find an essential and constitutional place. In striving to fulfill that ideal, not only the judges but the Congress and the Executive as well, must do all in their power to bring the judicial organization and personnel to the high standards of usefulness which sound and efficient government and modern conditions require.

This message has dealt with four present needs:

First, to eliminate congestion of calendars and to make the judiciary as a whole less static by the constant and systematic addition of new blood to its personnel—That is the first need—second, to make the judiciary more elastic by providing for temporary transfers of circuit and district judges to those places where federal courts are most
in arrears; third, to furnish the Supreme Court practical assistance in supervising the conduct of business in the lower courts; fourth, to eliminate inequality, uncertainty and delay now existing in the determination of constitutional questions involving federal statutes.

If we increase the personnel of the federal courts so that cases may be promptly decided in the first instance, and may be given adequate and prompt hearing on all appeals; if we invigorate all the courts by the persistent infusion of new blood; if we grant to the Supreme Court further power and responsibility in maintaining the efficiency of the entire federal judiciary; and if we assure government participation in the speedier consideration and final determination of all constitutional questions, we shall go a long way toward our high objectives. If these measures achieve their aim, we may be relieved of the necessity of considering any fundamental changes in the powers of the courts or the constitution of our Government—changes which involve consequences so far-reaching as to cause uncertainty as to the wisdom of such course.

As to the bill itself, so that you will get a practical idea of the bill—most of it is technical—I will only go over the high lights:

When any judge of a court of the United States, appointed to hold his office during good behavior, has heretofore or hereafter attained the age of seventy years and has held a commission or commissions as judge of any such court or courts at least ten years, continuously or otherwise, and within six months thereafter has neither resigned nor retired—In other words, when he gets to be seventy years and six months old and has neither resigned nor retired—the President, for each such judge who has not so resigned or retired, shall nominate, and by and with the advice and consent of the Senate, shall appoint one additional judge to the court to which the former is commissioned.

Is that clear?

The number of judges of any court shall be permanently increased by the number appointed thereto under the provisions of subsection (a) of this section. No more than fifty judges shall be appointed thereunder, nor shall any judge be so appointed if such appointment would result in (1) more than fifteen members of the Supreme Court of the United States, (2) more than two additional members so appointed to a circuit court of appeals, the Court of Claims, the United States Court of Customs and Patent Appeals, or the Customs Court, or (3) more than twice the number of judges now authorized to be appointed for any district or, in the case of judges appointed for more than one district, for any such group of districts.

Then Section 2 relates to assignments by the Chief Justice of any judge hereafter appointed to any other district or circuit.

The rest of the bill, that is Section 3, relates to the appointment of the Proctor, whose duty is to get information for the court in regard to the volume and status of litigation in all the courts of the United States, the need of assigning District Judges to congested areas or methods for expediting cases pending on the dockets. The Proctor, we suggest, should get a salary of $10,000 a year.

That is about all in the Act. The rest is technical.

And that is all the news.
Handout D: Franklin D. Roosevelt’s Fireside Chat
“On the Reorganization of the Judiciary”

March 9, 1937

MY FRIENDS, last Thursday I described in detail certain economic problems which everyone admits now face the nation. For the many messages which have come to me after that speech, and which it is physically impossible to answer individually, I take this means of saying thank you. Tonight, sitting at my desk in the White House, I make my first radio report to the people in my second term of office. I am reminded of that evening in March, four years ago, when I made my first radio report to you. We were then in the midst of the great banking crisis. Soon after, with the authority of the Congress, we asked the nation to turn over all of its privately held gold, dollar for dollar, to the government of the United States.

Today’s recovery proves how right that policy was. But when, almost two years later, it came before the Supreme Court its constitutionality was upheld only by a five-to-four vote. The change of one vote would have thrown all the affairs of this great nation back into hopeless chaos. In effect, four justices ruled that the right under a private contract to exact a pound of flesh was more sacred than the main objectives of the Constitution to establish an enduring nation.

In 1933 you and I knew that we must never let our economic system get completely out of joint again—that we could not afford to take the risk of another Great Depression.

We also became convinced that the only way to avoid a repetition of those dark days was to have a government with power to prevent and to cure the abuses and the inequalities which had thrown that system out of joint.

We then began a program of remedying those abuses and inequalities—to give balance and stability to our economic system, to make it bomb-proof against the causes of 1929.

Today we are only part-way through that program—and recovery is speeding up to a point where the dangers of 1929 are again becoming possible, not this week or month perhaps, but within a year or two.

National laws are needed to complete that program. Individual or local or state effort alone cannot protect us in 1937 any better than ten years ago.

It will take time—and plenty of time—to work out our remedies administratively even after legislation is passed. To complete our program of protection in time, therefore, we cannot delay one moment in making certain that our national government has power to carry through.

Four years ago action did not come until the eleventh hour. It was almost too late. If we learned anything from the depression, we will not allow ourselves to run around in new circles of futile discussion and debates, always postponing the day of decision.

The American people have learned from the depression. For in the last three national elections an overwhelming majority of them voted a mandate that the Congress and the president begin the task of providing that protection - not after long years of debate, but now.
Handout D: Page 2

The courts, however, have cast doubts on the ability of the elected Congress to protect us against catastrophe by meeting squarely our modern social and economic conditions.

We are at a crisis, a crisis in our ability to proceed with that protection. It is a quiet crisis. There are no lines of depositors outside closed banks. But to the farsighted it is far-reaching in its possibilities of injury to America.

I want to talk with you very simply tonight about the need for present action in this crisis - the need to meet the unanswered challenge of one-third of a nation ill-nourished, ill-clad, ill-housed.

Last Thursday I described the American form of government as a three-horse team provided by the Constitution to the American people so that their field might be plowed. The three horses are, of course, the three branches of government - the Congress, the executive, and the courts. Two of the horses, the Congress and the executive, are pulling in unison today; the third is not. Those who have intimated that the president of the United States is trying to drive that team, overlook the simple fact that the presidents, as chief executive, is himself one of the three horses.

It is the American people themselves who are in the driver’s seat. It is the American people themselves who want the furrow plowed. It is the American people themselves who expect the third horse to fall in unison with the other two.

I hope that you have re-read the Constitution of the United States in these past few weeks. Like the Bible, it ought to be read again and again.

It is an easy document to understand when you remember that it was called into being because the Articles of Confederation under which the original thirteen states tried to operate after the Revolution showed the need of a national government with power enough to handle national problems. In its Preamble, the Constitution states that it was intended to form a more perfect union and promote the general welfare; and the powers given to the Congress to carry out those purposes can best be described by saying that they were all the powers needed to meet each and every problem which then had a national character and which could not be met by merely local action.

But the framers of the Constitution went further. Having in mind that in succeeding generations many other problems then undreamed of would become national problems, they gave to the Congress the ample broad powers “to levy taxes... and provide for the common defense and general welfare of the United States.”

That, my friends, is what I honestly believe to have been the clear and underlying purpose of the patriots who wrote a federal Constitution to create a national government with national power, intended as they said, “to form a more perfect union...for ourselves and our posterity.”

For nearly twenty years there was no conflict between the Congress and the Court. Then in 1803 Congress passed a statute which the Court said violated an express provision of the Constitution. The Court claimed the power to declare it unconstitutional and did so declare it. But a little later the Court itself admitted that it was an extraordinary power to exercise and through Mr. Justice Washington laid down this limitation upon it: he said, “It is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body, by which any law is passed, to presume in favor of its validity until its violation of the Constitution is proved beyond all reasonable doubt.”

But since the rise of the modern movement for social and economic progress through legislation, the Court has more and more often and more and more boldly asserted a power to veto laws
passed by the Congress and by state legislatures in complete disregard of this original limitation which I have just read.

In the last four years the sound rule of giving statutes the benefit of all reasonable doubt has been cast aside. The Court has been acting not as a judicial body, but as a policymaking body.

When the Congress has sought to stabilize national agriculture, to improve the conditions of labor, to safeguard business against unfair competition, to protect our national resources, and in many other ways, to serve our clearly national needs, the majority of the Court has been assuming the power to pass on the wisdom of these acts of the Congress - and to approve or disapprove the public policy written into these laws.

That is not only my accusation. It is the accusation of most distinguished justices of the present Supreme Court. I have not the time to quote to you all the language used by dissenting justices in many of these cases. But in the case holding the Railroad Retirement Act unconstitutional, for instance, Chief Justice Hughes said in a dissenting opinion that the majority opinion was “a departure from sound principles,” and placed “an unwarranted limitation upon the commerce clause.” And three other justices agreed with him.

In the case of holding the AAA unconstitutional, Justice Stone said of the majority opinion that it was a “tortured construction of the Constitution.” And two other justices agreed with him.

In the case holding the New York minimum wage law unconstitutional, Justice Stone said that the majority were actually reading into the Constitution their own “personal economic predilections,” and that if the legislative power is not left free to choose the methods of solving the problems of poverty, subsistence, and health of large numbers in the community, then “government is to be rendered impotent.” And two other justices agreed with him.

In the face of these dissenting opinions, there is no basis for the claim made by some members of the Court that something in the Constitution has compelled them regretfully to thwart the will of the people.

In the face of such dissenting opinions, it is perfectly clear that, as Chief Justice Hughes has said, “We are under a Constitution, but the Constitution is what the judges say it is.”

The Court in addition to the proper use of its judicial functions has improperly set itself up as a third house of the Congress—a super-legislature, as one of the justices has called it—reading into the Constitution words and implications which are not there, and which were never intended to be there.

We have, therefore, reached the point as a nation where we must take action to save the Constitution from the Court and the Court from itself. We must find a way to take an appeal from the Supreme Court to the Constitution itself. We want a Supreme Court which will do justice under the Constitution and not over it. In our courts we want a government of laws and not of men.

I want—as all Americans want—an independent judiciary as proposed by the framers of the Constitution. That means a Supreme Court that will enforce the Constitution as written, that will refuse to amend the Constitution by the arbitrary exercise of judicial power—in other words by judicial say-so. It does not mean a judiciary so independent that it can deny the existence of facts which are universally recognized.

How then could we proceed to perform the mandate given us? It was said in last year’s Democratic platform, and here are the words, “if these problems cannot be effectively solved within
the Constitution, we shall seek such clarifying amendments as will assure the power to enact those laws, adequately to regulate commerce, protect public health and safety, and safeguard economic security.” In their words, we said we would seek an amendment only if every other possible means by legislation were to fail.

When I commenced to review the situation with the problem squarely before me, I came by a process of elimination to the conclusion that, short of amendments, the only method which was clearly constitutional, and would at the same time carry out other much needed reforms, was to infuse new blood into all our courts. We must have men worthy and equipped to carry out impartial justice. But, at the same time, we must have judges who will bring to the courts a present-day sense of the Constitution—judges who will retain in the courts the judicial functions of a court, and reject the legislative powers which the courts have today assumed.

It is well for us to remember that in forty-five out of the forty-eight states of the Union, judges are chosen not for life but for a period of years. In many states judges must retire at the age of seventy. Congress has provided financial security by offering life pensions at full pay for federal judges on all courts who are willing to retire at seventy. In the case of Supreme Court justices, that pension is $20,000 a year. But all federal judges, once appointed, can, if they choose, hold office for life, no matter how old they may get to be.

What is my proposal? It is simply this: whenever a judge or justice of any federal court has reached the age of seventy and does not avail himself of the opportunity to retire on a pension, a new member shall be appointed by the president then in office, with the approval, as required by the Constitution, of the Senate of the United States.

That plan has two chief purposes. By bringing into the judicial system a steady and continuing stream of new and younger blood, I hope, first, to make the administration of all federal justice, from the bottom to the top, speedier and, therefore, less costly; secondly, to bring to the decision of social and economic problems younger men who have had personal experience and contact with modern facts and circumstances under which average men have to live and work. This plan will save our national Constitution from hardening of the judicial arteries.

The number of judges to be appointed would depend wholly on the decision of present judges now over seventy, or those who would subsequently reach the age of seventy.

If, for instance, any one of the six justices of the Supreme Court now over the age of seventy should retire as provided under the plan, no additional place would be created. Consequently, although there never can be more than fifteen, there may be only fourteen, or thirteen, or twelve. And there may be only nine.

There is nothing novel or radical about this idea. It seeks to maintain the federal bench in full vigor. It has been discussed and approved by many persons of high authority ever since a similar proposal passed the House of Representatives in 1869.

Why was the age fixed at seventy? Because the laws of many states, and the practice of the civil service, the regulations of the Army and Navy, and the rules of many of our universities and of almost every great private business enterprise, commonly fix the retirement age at seventy years or less.

The statute would apply to all the courts in the federal system. There is general approval so far as the lower federal courts are concerned. The plan has met opposition only so far as the Supreme Court of the United States itself is concerned. But, my friends, if such a plan is good for the lower courts, it certainly ought to be equally good for the
highest Court, from which there is no appeal.

Those opposing this plan have sought to arouse prejudice and fear by crying that I am seeking to “pack” the Supreme Court and that a baneful precedent will be established.

What do they mean by the words “packing the Supreme Court?” Let me answer this question with a bluntness that will end all honest misunderstanding of my purposes.

If by that phrase “packing the Court” it is charged that I wish to place on the bench spineless puppets who would disregard the law and would decide specific cases as I wished them to be decided, I make this answer: that no president fit for his office would appoint, and no Senate of honorable men fit for their office would confirm, that kind of appointees to the Supreme Court.

But if by that phrase the charge is made that I would appoint and the Senate would confirm justices worthy to sit beside present members of the Court, who understand modern conditions, that I will appoint justices who will not undertake to override the judgment of the Congress on legislative policy, that I will appoint justices who will act as justices and not as legislators - if the appointment of such justices can be called “packing the Courts,” then I say that I and with me the vast majority of the American people favor doing just that thing—now.

Is it a dangerous precedent for the Congress to change the number of the justices? The Congress has always had, and will have, that power. The number of justices has been changed several times before, in the administrations of John Adams and Thomas Jefferson—both of them signers of the Declaration of Independence—in the administrations of Andrew Jackson, Abraham Lincoln, and Ulysses S. Grant.

I suggest only the addition of justices to the bench in accordance with a clearly defined principle relating to a clearly defined age limit. Fundamentally, if in the future, America cannot trust the Congress it elects to refrain from abuse of our constitutional usages, democracy will have failed far beyond the importance to democracy of any kind of precedent concerning the judiciary.

We think it so much in the public interest to maintain a vigorous judiciary that we encourage the retirement of elderly judges by offering them a life pension at full salary. Why then should we leave the fulfillment of this public policy to chance or make it dependent upon the desire or prejudice of any individual justice?

It is the clear intention of our public policy to provide for a constant flow of new and younger blood into the judiciary. Normally every president appoints a large number of district and circuit judges and a few members of the Supreme Court. Until my first term practically every president of the United States in our history had appointed at least one member of the Supreme Court. President Taft appointed five members and named a chief justice; President Wilson, three; President Harding, four, including a chief justice; President Coolidge, one; President Hoover, three including a chief justice.

Such a succession of appointments should have provided a Court well balanced as to age. But chance and the disinclination of individuals to leave the Supreme bench have now given us a Court in which five justices will be over seventy-five years of age before next June and one over seventy. Thus a sound public policy has been defeated.

So I now propose that we establish by law an assurance against any such ill-balanced Court in the future. I propose that hereafter, when a judge reaches the age of seventy, a new and younger judge shall be added to the Court automatically.
In this way I propose to enforce a sound public policy by law instead of leaving the composition of our federal courts, including the highest, to be determined by chance or the personal decision of individuals.

If such a law as I propose is regarded as establishing a new precedent, is it not a most desirable precedent?

Like all lawyers, like all Americans, I regret the necessity of this controversy. But the welfare of the United States, and indeed of the Constitution itself, is what we all must think about first. Our difficulty with the Court today rises not from the Court as an institution but from human beings within it. But we cannot yield our constitutional destiny to the personal judgment of a few men who, being fearful of the future, would deny us the necessary means of dealing with the present.

This plan of mine is no attack on the Court; it seeks to restore the Court to its rightful and historic place in our system of constitutional government and to have it resume its high task of building anew on the Constitution “a system of living law.” The Court itself can best undo what the Court has done.

I have thus explained to you the reasons that lie behind our efforts to secure results by legislation within the Constitution. I hope that thereby the difficult process of constitutional amendment may be rendered unnecessary. But let us examine that process.

There are many types of amendment proposed. Each one is radically different from the other. But there is no substantial group within the Congress or outside the Congress who are agreed on any single amendment.

I believe that it would take months or years to get substantial agreement upon the type and language of an amendment. It would take months and years thereafter to get a two-thirds majority in favor of that amendment in both houses of the Congress. Then would come the long course of ratification by three-quarters of all the states. No amendment which any powerful economic interests or the leaders of any powerful political party have had reason to oppose has ever been ratified within anything like a reasonable time. And remember that thirteen states which contain only 5 percent of the voting population can block ratification even though the thirty-five states with 95 percent of the population are in favor of it.

A very large percentage of newspaper publishers and chambers of commerce and bar associations and manufacturers’ associations, who are trying to give the impression today that they really do want a constitutional amendment, would be the very first to exclaim as soon as an amendment was proposed, “Oh! I was for an amendment all right, but this amendment that you’ve proposed is not the kind of an amendment that I was thinking about. And so, I am going to spend my time, my efforts, and my money to block this amendment, although I would be awfully glad to help to get some other kind of an amendment ratified.”

Two groups oppose my plan on the ground that they favor a constitutional amendment. The first includes those who fundamentally object to social and economic legislation along modern lines. This is the same group who during the recent campaign tried to block the mandate of the people. And the strategy of that last stand is to suggest the time-consuming process of amendment in order to kill off by delay the legislation demanded by the mandated. To those people I say, I do not think you will be able long to fool the American people as to your purposes.

The other group is composed of those who honestly believe the amendment process is the best and who would be willing to support a reasonable amendment if they could agree on one.
To them I say, we cannot rely on an amendment as the immediate or only answer to our present difficulties. When the time comes for action, you will find that many of those who pretend to support you will sabotage any constructive amendment which is proposed. Look at these strange bedfellows of yours. When before have you found them really at your side in your fights for progress?

And remember one thing more. Even if an amendment were passed, and even if in the years to come it were to be ratified, its meaning would depend upon the kind of justices who would be sitting on the Supreme Court bench. For an amendment, like the rest of the Constitution, is what the justices say it is rather than what its framers or you might hope it is.

This proposal of mine will not infringe in the slightest upon the civil or religious liberties so dear to every American.

My record as governor and as president proves my devotion to those liberties. You who know me can have no fear that I would tolerate the destruction by any branch of government of any part of our heritage of freedom.

The present attempt by those opposed to progress to play upon the fears of danger to personal liberty brings again to mind that crude and cruel strategy tried by the same opposition to frighten the workers of America in a pay-envelope propaganda against the Social Security law. The workers were not fooled by that propaganda then. And the people of America will not be fooled by such propaganda now.

I am in favor of action through legislation:

First, because I believe it can be passed at this session of the Congress.

Second, because it will provide a reinvigorated, liberal-minded judiciary necessary to furnish quicker and cheaper justice from bottom to top.

Third, because it will provide a series of federal courts willing to enforce the Constitution as written, and unwilling to assert legislative powers by writing into it their own political and economic policies.

During the past half-century the balance of power between the three great branches of the federal government has been tipped out of balance by the courts in direct contradiction of the high purposes of the framers of the Constitution. It is my purpose to restore that balance. You who know me will accept my solemn assurance that in a world in which democracy is under attack, I seek to make American democracy succeed. You and I will do our part.

Critical Thinking Questions

1. Why did President Roosevelt recommend reorganizing the judiciary? How did he justify his recommendation? Do you agree with Roosevelt?

2. Why did Roosevelt believe that a constitutional amendment was not an option in this case?

3. How would Roosevelt’s plan have changed the scope of federal power?

4. How do you think the American people responded to this Fireside Chat?

5. How do you think the judiciary responded to this Fireside Chat?
Handout A: Exploring Civil and Economic Freedom Essay

When you hear the term “civil rights,” which rights come to mind? Perhaps they include freedom of speech and assembly, the right to vote, and other actions frequently associated with political participation. More broadly, however, civil rights refer to any legally enforceable freedom of action. Some civil rights—e.g., life, liberty, and the pursuit of happiness—were so fundamental, so inextricably linked to a free society, that the Framers considered them to be inalienable. That is, they could not be voluntarily waived or surrendered. If, for instance, someone consented to labor for another, that consent could be revoked at any time.

To Enlightenment thinkers, classical liberals, British colonists in America, and, later, the Founding generation, the right to private property was intimately connected to the individual. Put another way, it was inalienable. A particular property could of course be sold or otherwise surrendered, but not the right to own and control property per se. John Locke argued that the right to own and control a piece of land, for example, arose by laboring to improve the land or draw resources from it. The Framers also understood property as encompassing much more than tangible objects or land. Conscience, according to James Madison, was “the most sacred of all property.”

Property and its owners, then, were bound together as intimately as individuals and their expressive activities—our freedom of speech, our right to march in protest, our right to cast ballots for our preferred policies and candidates. Our property—our beliefs, our opinions, our faculties, our things—is part of who we are. The ability to freely pursue property in all its forms was considered an essential freedom. It was at the heart of the pursuit of happiness.

While we may define “happiness” today in terms of contentment or even entertainment, to 18th century Americans the idea meant much more. Happiness encompassed the ability to take care of oneself and one’s family, to build wealth and enjoy the fruits of one’s labor. It was attained by living in liberty and by practicing virtue. Understanding the term as the Founders did is key to our understanding of the Declaration’s pronouncement that governments are instituted to protect our inalienable rights to “life, liberty, and the pursuit of happiness.”

Debate Over a Bill of Rights

The Constitution was written with several ends in mind. Listed in the Preamble, they had the multi-generational goal of ensuring “the blessings of liberty to ourselves and our posterity.” The now-familiar constitutional principles such as separation of powers, checks and balances, and our federal system served to limit and divide power in order to prevent tyranny and frustrate excessive government control over individual liberties.

With this purpose and structure in place, the Constitution submitted to the states for approval in 1787 did not contain a bill of rights. The Federalists, who supported the Constitution as written, argued that bills of rights were needed only against kings who wielded unlimited power, but they weren’t necessary for a free, popular government of enumerated powers. As Alexander
Hamilton wrote in *Federalist 84*, “[W]hy declare that things shall not be done which there is no power to do?”

Federalists went even further. Hamilton and Madison argued that the addition of a bill of rights was not only unnecessary, but could even be dangerous. Rights were sacred spaces around sovereign individuals into which government could not justly intrude. Carving out certain secured rights might cause people to think that, but for those few exceptions, other rights were not secured. In short, a bill of rights at the end of the Constitution might result in a massive increase in government power that would turn the very idea of limited government on its head.

**Madison’s Promise and the Ninth Amendment**

Several states sent lists of proposed amendments to Congress. With the Constitution still in doubt, Madison promised that Congress would take up a bill of rights after ratification. In the summer of 1789, he kept his promise and introduced draft amendments in the House. Mindful of his own warning against identifying a limited list of rights, Madison included what would ultimately become the Ninth Amendment: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

The Ninth Amendment would be a signal that while government powers were few and definite, the rights of naturally-free individuals were indefinite and numerous, even innumerable.

Though maligned in modern times by the late Supreme Court nominee Robert Bork as an “inkblot,” the amendment served in the Founding era, and was intended to serve for all time, as a reminder that the list of individual rights and due process protections in the Bill of Rights was not exhaustive. Madison wrote later in 1792, “As a man is said to have a right to his property, he may be equally said to have a property in his rights.”

**The Supreme Court and Liberty**

Congress approved twelve amendments and sent them to the states for ratification. Of those 12, the states ratified ten, which became the Bill of Rights in 1791. Because the limits on government applied only at the federal level and the scope of federal power was relatively small, federal lawmaking faced few constitutional challenges for several decades. The states, however, were not subject to the federal Bill of Rights and condoned numerous violations—slavery being the most egregious.

Not until the 14th Amendment, ratified 77 years later in 1868, were the states prevented from making or enforcing “any law which shall abridge the privileges or immunities of citizens of the United States; ... deprive any person of life, liberty, or property, without due process of law; [or] deny to any person within its jurisdiction the equal protection of the laws.”

But which rights would be protected from unjust abrogation by state governments? Through a series of cases involving rights ranging from freedom of religion to protection against cruel and unusual punishment, the Supreme Court identified the rights that would be “incorporated,” i.e., applied to limit state power. Generally, the Court asked whether claimed rights were “fundamental,” which depended in turn on whether they were “implicit in the concept of ordered liberty” or “rooted in the traditions and conscience of our people.” Not all rights qualified, and that meant some rights would be less vigorously protected than others.
In cases like *Meyer v. Nebraska* (1923) and *Pierce v. Society of Sisters* (1925) the right to liberty was interpreted broadly. Under the 14th Amendment’s Due Process Clause, the Court protected the right to educate one’s children in a private school (*Pierce*) and the right to teach young children a foreign language (*Meyer*). Further, the Court held in *Meyer*, if government wanted to bring about an outcome in society, no matter how noble, it could not go about reaching that goal via unconstitutional means. “That the State may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected...a desirable end cannot be promoted by prohibited means.”

In *Lochner v. New York* (1905), the Court struck down a state law limiting the number of hours bakers could work. The Court held that a law of this scope was outside of the legislature’s constitutional power, and that citizens’ liberty included the right to earn an honest living, as well as the right for employers and employees to enter into contracts. This case began what is now called the “Lochner Era” during which the Court interpreted the Due Process Clause of the Fourteenth Amendment as protecting economic rights to the same degree as other personal rights. For this reason, and because the Court’s rulings came into direct conflict with Congress’s attempts to intervene in the marketplace and redistribute wealth, many regard *Lochner* Era rulings as examples of judicial activism.

**The New Deal and the Switch in Time that Saved Nine**

After several economic regulations advanced by President Franklin D. Roosevelt’s administration were struck down by the Court’s conservative bloc, Roosevelt proposed the Judicial Procedures Reform Bill of 1937, giving the President the power to appoint a new justice to the high Court for each current justice over the age of 70-1/2. This would have resulted in six new justices at that time. In what is now called “the switch in time that saved nine,” Justice Owen Roberts, who often sided with the conservatives, voted to uphold a Washington state minimum wage law for women. That case, *West Coast Hotel v. Parrish* (1937) marked the end of the *Lochner* Era. The new Court majority held that “deprivation of liberty to contract is forbidden by the Constitution if without due process of law, but restraint or regulation of this liberty, if reasonable in relation to its subject and if adopted for the protection of the community against evils menacing the health, safety, morals and welfare of the people, is due process.”

While the Supreme Court had previously treated individual economic freedom as fundamental to “ordered liberty” under the Due Process Clause, after 1937 these rights were to be subordinated. Moreover, another part of the 14th Amendment, the Privileges or Immunities clause, offered no further protection. Decades earlier in the *Slaughterhouse Cases* (1873), the Court had limited the scope of “privileges or immunities” to activities such as petitioning government, access to navigable waters, and the writ of *habeas corpus*. Economic rights were not included.

**Footnote 4**

In *U.S. v. Carolene Products Company* (1938), the Court held that Congress could ban “filled milk” as a health hazard (a charge for which there was no evidence, but which protected large corporate milk producers from smaller competitors selling a lower-cost product). “Filled milk” refers to skim milk to which some form of fat other than milk fat has been added. Often vegetable oil was used. The result resembled cream, but was less expensive. *Carolene* might have been just another case.
Handout A: Page 4

upholding Congress’s power to regulate economic activity, but a single footnote supplied a rationale for elevating some rights over others.

In Footnote 4, the Court established a hierarchy of rights. In the top tier, entitled to the highest level of protection, are “fundamental” rights such as some of those secured by the first ten amendments to the Constitution, access to key political processes such as voting, and equal treatment of “discrete and insular minorities.” Government restrictions on those rights are rigorously scrutinized to determine their necessity and effectiveness. To be upheld, a restriction must be narrowly tailored to serve a compelling government interest. By contrast, in the bottom tier, are “non-fundamental” economic liberties such as the right to own property and earn an honest living. Government regulation of economic liberties is subject only to a “rational basis” test: The regulation is presumed to be constitutional; the burden is on the citizen to prove it is not; and the regulation will be upheld if it is reasonably related to a legitimate government purpose.

The history of the Court’s treatment of various rights suggests that certain types of activities—the ones we think of today as implicating “civil rights”—receive the greatest constitutional protection. The question whether other rights just as fundamental to our nature have been “den[ied] or disparage[d]” should be the subject of searching inquiry.

Critical Thinking Questions

1. How did the Founding generation understand “property”?
2. What was a chief reason that Federalists opposed a listing of specific liberties (a bill of rights)?
3. Which branch of government do you believe is best suited to determine which rights government cannot infringe? Why?
4. Was the Court right in *Carolene Products* to distinguish between types of rights? Explain.
5. Are civil and economic liberties different? If so, why? If not, why not?
6. Does Footnote 4 of *Carolene Products* prove the Federalists right about the dangers of listing certain rights at the end of the Constitution, or was the footnote consistent with the Constitution and the goal of protecting liberty?
Handout B: *Citizens United v. F.E.C. (2010)*

Case Background

Since the rise of modern “big business” in the Industrial Age, Americans have expressed concerns about the influence of corporations and other “special interests” in our political system. In 1910 President Theodore Roosevelt called for laws to “prohibit the use of corporate funds directly or indirectly for political purposes... [as they supply] one of the principal sources of corruption in our political affairs.” Although Congress had already made such corporate contributions illegal with the Tillman Act (1907), Roosevelt’s speech nonetheless prompted Congress to amend this law to add enforcement mechanisms with the 1910 Federal Corrupt Practices Act. Future Congresses would enlarge the sphere of “special interests” barred from direct campaign contributions through—among others—the Hatch Act (1939), restricting the political campaign activities of federal employees, and the Taft-Hartley Act (1947), prohibiting labor unions from expenditures that supported or opposed particular federal candidates.

Collectively, these laws formed the backbone of America’s campaign finance laws until they were replaced by the Federal Elections Campaign Acts (FECA) of 1971 and 1974. FECA of 1971 strengthened public reporting requirements of campaign financing for candidates, political parties and political committees (PACs). The FECA of 1974 added specific limits to the amount of money that could be donated to candidates by individuals, political parties, and PACs, and also what could be independently spent by people who want to talk about candidates. It provided for the creation of the Federal Election Commission, an independent agency designed to monitor campaigns and enforce the nation’s political finance laws. Significantly, FECA left members of the media, including corporations, free to comment about candidates without limitation, even though such commentary involved spending money and posed the same risk of quid pro quo corruption as other independent spending.

In *Buckley v. Valeo* (1976), however, portions of the FECA of 1974 were struck down by the Supreme Court. The Court deemed that restricting independent spending by individuals and groups to support or defeat a candidate interfered with speech protected by the First Amendment, so long as those funds were independent of a candidate or his/her campaign. Such restrictions, the Court held, unconstitutionally interfered with the speakers’ ability to convey their message to as many people as possible. Limits on direct campaign contributions, however, were permissible and remained in place. The Court’s rationale for protecting independent spending was not, as is sometimes stated, that the Court equated spending money with speech. Rather, restrictions on spending money for the purpose of engaging in political speech unconstitutionally interfered with the First Amendment-protected right to free speech. (The Court did mention that direct contributions to candidates could be seen as symbolic expression, but concluded that they were generally restrictable despite that.)

The decades following *Buckley* would see a great proliferation of campaign spending. By 2002, Congress felt pressure to address this
spending and passed the Bipartisan Campaign Finance Reform Act (BCRA). A key provision of the BCRA was a ban on speech that was deemed “electioneering communications”—speech that named a federal candidate within 30 days of a primary election or 60 days of a general election that was paid for out of a “special interest’s” general fund (PACs were left untouched by this prohibition). An immediate First Amendment challenge to this provision—in light of the precedent set in Buckley—was mounted in *McConnell v. F.E.C.* (2003). But the Supreme Court upheld it as a restriction justified by the need to prevent both “actual corruption...and the appearance of corruption.”

Another constitutional challenge to the BCRA would be mounted by the time of the next general election. Citizens United, a nonprofit organization, was primarily funded by individual donations, with relatively small amounts donated by for-profit corporations as well. In the heat of the 2008 primary season, Citizens United released a full-length film critical of then-Senator Hillary Clinton entitled *Hillary: the Movie*. The film was originally released in a limited number of theaters and on DVD, but Citizens United wanted it broadcast to a wider audience and approached a major cable company to make it available through their “On-Demand” service. The cable company agreed and accepted a $1.2 million payment from Citizens United in addition to purchased advertising time, making it free for cable subscribers to view.

Since the film named candidate Hillary Clinton and its On-Demand showing would fall within the 30-days-before-a-primary window, Citizens United feared it would be deemed an “electioneering communications” under the BCRA. The group mounted a preemptive legal challenge to this aspect of the law in late 2007, arguing that the application of the provision to *Hillary* was unconstitutional and violated the First Amendment in their circumstance. A lower federal court disagreed, and the case went to the Supreme Court in early 2010.

In a 5-4 decision, the Supreme Court ruled in *Citizens United v. F.E.C.* that: 1) the BCRA’s “electioneering communication” provision did indeed apply to *Hillary* and that 2) the law’s ban on corporate and union independent expenditures was unconstitutional under the First Amendment’s speech clause. “Were the Court to uphold these restrictions,” the Court reasoned, “the Government could repress speech by silencing certain voices at any of the various points in the speech process.” *Citizens United v. F.E.C.* extended the principle, set 34 years earlier in *Buckley*, that restrictions on spending money for the purpose of engaging in political speech unconstitutionally burdened the right to free speech protected by the First Amendment.
Comprehension and Critical Thinking Questions

1. Summarize the ways in which various campaign finance laws have restricted the political activities of groups, including corporations and unions.

2. What was the main idea of the ruling in Buckley v. Valeo?

3. What political activity did the group Citizens United engage in during the 2008 primary election? How was this activity potentially illegal under the BCRA?

4. How did the Supreme Court rule in Citizens United v. F.E.C.? In what way is it connected to the ruling in Buckley?

5. Do you believe that the First Amendment should protect collective speech (i.e. groups, including “special interests”) to the same extent it protects individual speech? Why or why not?

6. What if the government set strict limits on people spending money to get the assistance of counsel, or to educate their children, or to have abortions? Or what if the government banned candidates from traveling in order to give speeches? Would these hypothetical laws be unconstitutional under the reasoning the Court applied in Buckley and Citizens United? Why or why not?
Handout C: Documents

**Key Question:** Assess whether the Supreme Court ruled correctly in *Citizens United v. F.E.C.* (2010), in light of constitutional principles including republican government, freedom of speech, and property rights.

**Documents:**

A. *Federalist No. 10* by James Madison (1787)
B. Thomas Jefferson to Edward Carrington (1787)
C. The First Amendment (1791)
D. *Dartmouth College v. Woodward* (1819)
E. “The Bosses of the Senate,” Joseph Keppler (1889)
F. New Nationalism Speech, Theodore Roosevelt (1910)
G. *Buckley v. Valeo* (1976)
J. *Citizens United v. F.E.C.* (2010), Majority Opinion
K. *Citizens United v. F.E.C.* (2010), Dissenting Opinion
L. *Citizens United v. F.E.C.* (2010), Concurring Opinion
M. “Another Dam Breaks,” Matt Wuerker (2010)
Document A

*Federalist No. 10 by James Madison (1787)*

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, advered to the rights of other citizens, or to the permanent and aggregate interests of the community.

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.

[Because] the *causes* of faction cannot be removed... relief is only to be sought in the means of controlling its *effects*... 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.

*(Italics are Madison’s)*

1. **How does James Madison define a faction?**

2. **What does Madison argue serves as a “check” on the influence various factions may have on society?**

3. **Would the Federalist Papers have been legal under the BCRA?**
**Document B**

**Thomas Jefferson to Edward Carrington (1787)**

I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors: and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty...The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them...

If once they become inattentive to the public affairs, you and I, and Congress, and Assemblies, judges and governors shall all become wolves.

1. **What does Jefferson believe is “the basis of our governments”?**
2. **What does Jefferson believe is “the only safeguard of the public liberty”?**
3. **What does Jefferson seem to believe is a possible disadvantage of press freedom? Why does he find it acceptable?**
4. **What does Jefferson predict will happen if the people become inattentive to public affairs?**

**Document C**

**The First Amendment (1791)**

Congress shall make no law...abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

1. **Why did the Founders deem speech and assembly so vital to self-government?**
2. **List a variety of ways you see Americans “speak” and “assemble” in political life.**
Document D

Dartmouth College v. Woodward (1819), Majority Opinion

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs and to hold property...It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities that corporations were invented and are in use...

The opinion of the Court, after mature deliberation, is that this is a contract the obligation of which cannot be impaired without violating the Constitution of the United States. This opinion appears to us to be equally supported by reason and by the former decisions of this Court.

1. According to this unanimous opinion by Chief Justice John Marshall, what properties does a corporation possess?

2. In what actions may a corporation engage?

3. How would you explain the reasoning behind the decision that a corporation has an enforceable right to enter into contracts?
1. How does this cartoon express the concern of “quid pro quo” corruption?

2. What is the significance of the closed door with the sign above it in the upper left hand corner of the cartoon?

3. Did Madison’s assertion in Federalist No. 10 (Document A)—that the republican principle will serve as a check on the influence of factions—apply in the cartoon’s time period? Does it apply today?

Document F

New Nationalism Speech, Theodore Roosevelt (1910)

[O]ur government, National and State, must be freed from the sinister influence or control of special interests. Exactly as the special interests of cotton and slavery threatened our political integrity before the Civil War, so now the great special business interests too often control and corrupt the men and methods of government for their own profit. We must drive the special interests out of politics... [E]very special interest is entitled to justice, but not one is entitled to a vote in Congress, to a voice on the bench, or to representation in any public office. The Constitution guarantees protection to property, and we must make that promise good. But it does not give the right of suffrage to any corporation.

1. What does Roosevelt mean by “special interests”?

2. Does this concept relate to Madison’s definition of “faction”? If so, how?
Document G

*Buckley v. Valeo* (1976), Majority Opinion

Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation...Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest possible protection to such political expression in order to assure unfettered exchange of ideas for the bringing about of political and social changes desired by the people...A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today’s mass society requires the expenditure of money.

1. **Restate this excerpt from the Buckley ruling in your own words.**

Document H


Citizens United is an organization dedicated to restoring our government to citizens’ control. Through a combination of education, advocacy, and grass roots organization, Citizens United seeks to reassert the traditional American values of limited government, freedom of enterprise, strong families, and national sovereignty and security. Citizens United’s goal is to restore the founding fathers’ vision of a free nation, guided by the honesty, common sense, and good will of its citizens...Citizens United has a variety of different projects that help it uniquely and successfully fulfill its mission. Citizens United is well known for producing high-impact, sometimes controversial, but always fact-based documentaries filled with interviews of experts and leaders in their fields.

1. **Do you believe James Madison would consider Citizens United a faction? Why or why not?**

2. **Is Citizens United an “assembly” of people seeking to engage in political “speech?” Why or why not?**
Because corporations can still fund electioneering communications with PAC money, it is 'simply wrong' to view the [BCRA] provision as a 'complete ban' on expression...

We have repeatedly sustained legislation aimed at 'the corrosive effects of immense aggregations of wealth that are accumulated with the help of the corporate form...[T]he government has a compelling interest in regulating advertisements that expressly advocate the election or defeat of a candidate for federal office...corporations and unions may finance genuine issue ads during those time frames by simply avoiding any specific reference to federal candidates, or...by paying for the ad from a segregated fund [PAC].

1. **Restate the McConnell opinion in your own words.**

2. **In your opinion, is the McConnell ruling consistent with the ruling in Buckley (Document G) in its interpretation of the First Amendment?**
Document J


The F.E.C. has adopted 568 pages of regulations, 1,278 pages of explanations and justifications for those regulations, and 1,771 advisory opinions since 1975. Even the complexity of the regulations and the deference courts show to administrative determinations, a speaker who wants to avoid threats of criminal liability and the heavy costs of defending against F.E.C. enforcement must ask a governmental agency for prior permission to speak.

If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech. All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech. The First Amendment protects the resulting speech.

At the founding, speech was open, comprehensive, and vital to society’s definition of itself; there were no limits on the sources of speech and knowledge. By suppressing the speech of manifold corporations, both for-profit and nonprofit, the Government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests. Factions will necessarily form in our Republic, but the remedy of ‘destroying the liberty’ of some factions is ‘worse than the disease’ [Federalist 10]. Factions should be checked by permitting them all to speak, and by entrusting the people to judge what is true and what is false.

When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.

The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy. By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials.

Rapid changes in technology—and the creative dynamic inherent in the concept of free expression—counsel against upholding a law that restricts political speech in certain media or by certain speakers. Today, 30-second television ads may be the most effective way to convey a political message. Soon, however, it may be that Internet sources...will provide citizens with significant information about political candidates and issues. Yet, [the BCRA] would seem to ban a blog post expressly advocating the election or defeat of a candidate if that blog were created with corporate funds. The First Amendment does not permit Congress to make these categorical distinctions based on the corporate identity of the speaker and the content of the political speech.

1. How would you summarize the Court’s interpretation of the First Amendment?
2. How would you evaluate the Court’s analysis of Federalist 10?
3. The Court reasoned, “The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy.” Do you agree? What effect, if any, does this ruling have on the republican principle of the United States government?
Citizens United v. F.E.C. (2010), Dissenting Opinion

[In] a variety of contexts, we have held that speech can be regulated differentially on account of the speaker’s identity, when identity is understood in categorical or institutional terms. The Government routinely places special restrictions on the speech rights of students, prisoners, members of the Armed Forces, foreigners, and its own employees.

Unlike our colleagues, the Framers had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind...[M]embers of the founding generation held a cautious view of corporate power and a narrow view of corporate rights...[and] they conceptualized speech in individualistic terms. If no prominent Framer bothered to articulate that corporate speech would have lesser status than individual speech, that may well be because the contrary proposition—if not also the very notion of “corporate speech”—was inconceivable.

On numerous occasions we have recognized Congress’s legitimate interest in preventing the money that is spent on elections from exerting an ‘undue influence on an officeholder’s judgment’ and from creating ‘the appearance of such influence.’ Corruption operates along a spectrum, and the majority’s apparent belief that quid pro quo arrangements can be neatly demarcated from other improper influences does not accord with the theory or reality of politics...A democracy cannot function effectively when its constituent members believe laws are being bought and sold.

A regulation such as BCRA may affect the way in which individuals disseminate certain messages through the corporate form, but it does not prevent anyone from speaking in his or her own voice.

At bottom, the Court’s opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.

1. How does the reasoning in the dissenting opinion differ from that of the Majority (Document J)?

2. How would you evaluate the dissenters’ statement, “A democracy cannot function effectively when its constituent members believe laws are being bought and sold.”
The Framers didn't like corporations, the dissent concludes, and therefore it follows (as night the day) that corporations had no rights of free speech.

The lack of a textual exception for speech by corporations cannot be explained on the ground that such organizations did not exist or did not speak. To the contrary...both corporations and voluntary associations actively petitioned the Government and expressed their views in newspapers and pamphlets. For example: An antislavery Quaker corporation petitioned the First Congress, distributed pamphlets, and communicated through the press in 1790. The New York Sons of Liberty sent a circular to colonies farther south in 1766. And the Society for the Relief and Instruction of Poor Germans circulated a biweekly paper from 1755 to 1757.

The dissent says that when the Framers “constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind.” That is no doubt true. All the provisions of the Bill of Rights set forth the rights of individual men and women—not, for example, of trees or polar bears. But the individual person’s right to speak includes the right to speak in association with other individual persons. Surely the dissent does not believe that speech by the Republican Party or the Democratic Party can be censored because it is not the speech of “an individual American.” It is the speech of many individual Americans, who have associated in a common cause, giving the leadership of the party the right to speak on their behalf. The association of individuals in a business corporation is no different—or at least it cannot be denied the right to speak on the simplistic ground that it is not “an individual American.”

1. Why does this Justice argue that the original understanding of the First Amendment does not allow for limitations on the speech of associations such as corporations and unions? Do you agree?
1. What does the cartoonist predict will be the effect of the Citizens United ruling?

2. What assumptions does the cartoonist seem to make about voters? Are they valid assumptions? Explain.

The purpose of protecting the life of our Nation and preserving the liberty of our citizens is to pursue the happiness of our people. Our success in that pursuit is the test of our success as a Nation...[I]n your time we have the opportunity to move not only toward the rich society and the powerful society, but upward to the Great Society.

The Great Society rests on abundance and liberty for all. It demands an end to poverty and racial injustice, to which we are totally committed in our time. But that is just the beginning. The Great Society is a place where every child can find knowledge to enrich his mind and to enlarge his talents. It is a place where leisure is a welcome chance to build and reflect, not a feared cause of boredom and restlessness.

But most of all, the Great Society is not a safe harbor, a resting place, a final objective, a finished work. It is a challenge constantly renewed, beckoning us toward a destiny where the meaning of our lives matches the marvelous products of our labor. So I want to talk to you today about three places where we begin to build the Great Society in our cities, in our countryside, and in our classrooms...

In the remainder of this century urban population will double, city land will double, and we will have to build homes, highways, and facilities equal to all those built since this country was first settled. So in the next 40 years we must re-build the entire urban United States...Our society will never be great until our cities are great.

A second place where we begin to build the Great Society is in our countryside. We have always prided ourselves on being not only America the strong and America the free, but America the beautiful. Today that beauty is in danger. The water we drink, the food we eat, the very air that we breathe, are threatened with pollution.

A third place to build the Great Society is in the classrooms of America...We must seek an educational system which grows in excellence as it grows in size. This means better training for our teachers. It means preparing youth to enjoy their hours of leisure as well as their hours of labor. It means exploring new techniques of teaching, to find new ways to stimulate the love of learning and the capacity for creation.

These are three of the central issues of the Great Society. While our Government has many programs directed at those issues, I do not pretend that we have the full answer to those problems.

But I do promise this: We are going to assemble the best thought and the broadest knowledge from all over the world to find those answers for America. I intend to establish working groups to prepare a series of White House conferences and meetings on the cities, on natural beauty, on the quality of education, and on other emerging challenges. And from these meetings and from this inspiration and from these studies we will begin to set our course toward the Great Society...
These United States are confronted with an economic affliction of great proportions. We suffer from the longest and one of the worst sustained inflations in our national history...

Idle industries have cast workers into unemployment, human misery, and personal indignity.

Those who do work are denied a fair return for their labor by a tax system which penalizes successful achievement and keeps us from maintaining full productivity.

But great as our tax burden is, it has not kept pace with public spending. For decades we have piled deficit upon deficit, mortgaging our future and our children’s future for the temporary convenience of the present...

In this present crisis, government is not the solution to our problem; government is the problem. From time to time we’ve been tempted to believe that society has become too complex to be managed by self-rule, that government by an elite group is superior to government for, by, and of the people. Well, if no one among us is capable of governing himself, then who among us has the capacity to govern someone else?

...So, as we begin, let us take inventory. We are a nation that has a government—not the other way around. And this makes us special among the nations of the Earth. Our government has no power except that granted it by the people.

It is time to check and reverse the growth of government, which shows signs of having grown beyond the consent of the governed.

It is my intention to curb the size and influence of the federal establishment and to demand recognition of the distinction between the powers granted to the federal government and those reserved to the states or to the people. All of us need to be reminded that the federal government did not create the states; the states created the federal government.

If we look to the answer as to why for so many years we achieved so much, prospered as no other people on earth, it was because here in this land we unleashed the energy and individual genius of man to a greater extent than has ever been done before. Freedom and the dignity of the individual have been more available and assured here than in any other place on earth. The price for this freedom at times has been high, but we have never been unwilling to pay the price.

It is no coincidence that our present troubles parallel and are proportionate to the intervention and intrusion in our lives that result from unnecessary and excessive growth of government.

...So, with all the creative energy at our command, let us begin an era of national renewal. Let us renew our determination, our courage, and our strength. And let us renew our faith and our hope.
Handout F: Articles I and II of the United States Constitution

Article I

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.
The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

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

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

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

Section 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time: and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.
Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

**Section 8.** The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;
To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;
To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;
To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;
To provide for the punishment of counterfeiting the securities and current coin of the United States;
To establish post offices and post roads;
To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;
To constitute tribunals inferior to the Supreme Court;
To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;
To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
To provide and maintain a navy;
To make rules for the government and regulation of the land and naval forces;
To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;
To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto Law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.
Article II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve,
Section 2. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4. The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.
Handout A: Excerpts from the Articles of Confederation

Article VI.

No State, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, Prince or State; nor shall any person holding any office of profit or trust under the United States, or any of them, accept any present, emolument, office or title of any kind whatever from any King, Prince or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

... 

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; ...

Article IX.

The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article — of sending and receiving ambassadors — entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever — of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated — of granting letters of marque and reprisal in times of peace — appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

... 

The United States in Congress assembled shall never engage in a war, nor grant letters of marque or reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of the majority of the United States in Congress assembled.
Handout B: Excerpts from the U.S. Constitution

Article I

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this
Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto Law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II

Section 2. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided
two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

Section 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.
Handout C: Compare the Articles of Confederation with the U.S. Constitution

**Directions:** Use Handout A: Excerpts from the Articles of Confederation and Handout B: Excerpts from the U.S. Constitution to complete Handout C, comparing the documents with respect to international relations, and then answer the questions below. In each cell, show where in the document you found the answer. The first three rows have been completed for you as an example. *{Note: three cells in the table will be left blank.}*

<table>
<thead>
<tr>
<th>Question</th>
<th>Articles of Confederation</th>
<th>U.S. Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Under what conditions can a state enter into treaties and alliances with other countries?</td>
<td>a. With consent by United States in Congress assembled (Article 6)</td>
<td>b. Never (Article 1 Section 10)</td>
</tr>
<tr>
<td>2. Who can grant titles of nobility?</td>
<td>a. No one (Article 6)</td>
<td>b. No one (Article 1 Section 10)</td>
</tr>
<tr>
<td>3. Who has the power to collect taxes?</td>
<td>a. Only the States</td>
<td>b. Congress (Article 1, Section 8, Clause 1)</td>
</tr>
<tr>
<td>4. Under what conditions can a state engage in war (if there is no actual or imminent invasion)?</td>
<td>a.</td>
<td>b.</td>
</tr>
<tr>
<td>5. Who can determine on peace and war?</td>
<td>a.</td>
<td>b.</td>
</tr>
<tr>
<td>6. Who can declare war?</td>
<td>a.</td>
<td>b.</td>
</tr>
<tr>
<td>7. Who has the power to engage in war?</td>
<td>a.</td>
<td>b.</td>
</tr>
<tr>
<td>8. Who is commander in chief of the army and navy?</td>
<td>a.</td>
<td>b.</td>
</tr>
<tr>
<td>9. Who has the power to provide and maintain an army and navy?</td>
<td>a.</td>
<td>b.</td>
</tr>
</tbody>
</table>
### Articles of Confederation vs. U.S. Constitution

<table>
<thead>
<tr>
<th>Question</th>
<th>Articles of Confederation</th>
<th>U.S. Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. Who can send ambassadors?</td>
<td>a.</td>
<td>b.</td>
</tr>
<tr>
<td>12. Who has the power to enter into treaties and alliances?</td>
<td>a.</td>
<td>b.</td>
</tr>
<tr>
<td>13. Who has the power to coin money?</td>
<td>a.</td>
<td>b.</td>
</tr>
<tr>
<td>14. Who has the power to appropriate money for defense of the United States?</td>
<td>a.</td>
<td>b.</td>
</tr>
<tr>
<td>15. Who has the power to borrow money on the credit of the United States?</td>
<td>a.</td>
<td>b.</td>
</tr>
</tbody>
</table>

1. Name an important difference between the two documents with respect to the branches of government.

___________________________________________________________________________________________________________
___________________________________________________________________________________________________________
___________________________________________________________________________________________________________

2. Why do you think the Framers of the U.S. Constitution gave some foreign affairs roles to the president that had belonged to the Congress under the Articles of Confederation?

___________________________________________________________________________________________________________
___________________________________________________________________________________________________________
___________________________________________________________________________________________________________

3. Under the U.S. Constitution, which branch do you believe has more war powers, the president or the Congress? Explain your answer by referring to specific passages in the Constitution.

___________________________________________________________________________________________________________
___________________________________________________________________________________________________________
___________________________________________________________________________________________________________
**Handout D: The President as Chief Diplomat**

**Directions:** Define each phrase and explain how it reflects the president’s role as Chief Diplomat.

<table>
<thead>
<tr>
<th>Constitution Citation</th>
<th>Constitutional Phrase</th>
<th>Definition</th>
<th>How does this duty reflect the role of Chief Diplomat?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article II, Section 1</td>
<td>Executive power</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article II, Section 2</td>
<td>Advice and consent of the Senate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article II, Section 2</td>
<td>Make treaties</td>
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Handout E: Excerpts from the Pacificus-Helvidius Debate

**Background:** In February 1793, France declared war on Great Britain, and news of this move reached the United States in early April. President George Washington and his cabinet were in agreement that the United States must remain neutral with respect to this conflict. However, when Washington asked his cabinet’s advice concerning implementation of the policy of neutrality, the issue prompted a serious rift in the cabinet, pitting Secretary of the Treasury Alexander Hamilton against Secretary of State Thomas Jefferson. Foremost among Washington’s questions was whether he should issue a formal proclamation of neutrality. The president issued his proclamation on April 22, and Jefferson resigned his cabinet post in protest against the proclamation. Shortly thereafter began an exchange of essays written by Hamilton (writing as “Pacificus”) and James Madison (writing as “Helvidius”), who took up the argument expressing the viewpoint he shared with Jefferson. Everyone recognized that the United States, in these early days of the republic, must not be drawn into a European war. Pacificus maintained that it was the proper role of the president to formally make such a proclamation, even though the Constitution does not explicitly list “neutrality proclamations” as an executive power. Helvidius argued for a stricter interpretation – that Congress, not the president, had the primary responsibility to steer such foreign policy issues.

**Pacificus** [Italics original]

The inquiry then is- what department of the Government of the United States is the proper one to make a declaration of Neutrality in the cases in which the engagements of the Nation permit and its interests require such a declaration.

A correct and well informed mind will discern at once that it can belong neither to the Legislature nor Judicial Department and of course must belong to the Executive.

The Legislative Department is not the organ of intercourse between the United States and foreign Nations. It is charged neither with making nor interpreting Treaties. It is therefore not naturally that Organ of the Government, which is to pronounce the existing condition of the Nation, with regard to foreign Powers, or to admonish the Citizens of their obligations and duties as founded upon that condition of things. Still less is it charged with execution and observance of those obligations and those duties.

It is equally obvious that the act in question is foreign to the Judiciary Department of Government. The province of that Department is to decide litigations in particular cases. It is indeed charged with the interpretation of treaties; but it exercises this function only in the litigated cases; that is where contending parties bring before it a specific controversy. It has no concern with pronouncing upon the external political relations of Treaties between Government and Government. This position is too plain to need being insisted upon.

It must then of necessity belong to the Executive Department to exercise the function in Question- when a proper case for the exercise of it occurs...

If the Legislature have a right to make war on the one hand-it is on the other the duty of the
Executive to preserve Peace till war is declared; and in fulfilling that duty, it must necessarily possess a right of judging what is the nature of the obligations which the treaties of the Country impose on the Government; and when in pursuance of this right it has concluded that there is nothing in them inconsistent with a *state* of neutrality, it becomes both its province and its duty to enforce the laws incident to that state of the Nation. The Executive is charged with the execution of all laws, the law of Nations as well as the Municipal law, which recognizes and adopts those laws. It is consequently bound, by faithfully executing the laws of neutrality, when that is the state of the Nation, to avoid giving a cause of war to foreign Powers.

**Helvidius** [Italics original]

[T]he powers to declare war, to conclude peace, and to form alliances, [are] among the highest acts of the sovereignty; of which the legislative power must at least be an integral and preeminent part...

To say then that the power of making treaties which are confessedly laws, belongs naturally to the department which is to execute laws, is to say, that the executive department naturally includes a legislative power. In theory, this is an absurdity – in practice a tyranny.”

...From this view of the subject it must be evident, that although the executive may be a convenient organ of preliminary communications with foreign governments, on the subjects of treaty or war; and the proper agent for carrying into execution the final determinations of the competent authority; yet it can have no pretensions from the nature of the powers in question compared with the nature of the executive trust, to that essential agency which gives validity to such determinations.

It must be further evident that, if these powers be not in their nature purely legislative, they partake so much more of that, than of any other quality, that under a constitution leaving them to result to their most natural department, the legislature would be without a rival in its claim.

Another important inference to be noted is, that the powers of making war and treaty being substantially of a legislative, not an executive nature, the rule of interpreting exceptions strictly, must narrow instead of enlarging executive pretensions on those subjects...

In the general distribution of powers, we find that of declaring war expressly vested in the Congress, where every other legislative power is declared to be vested, and without any other qualification than what is common to every other legislative act. The constitutional idea of this power would seem then clearly to be, that it is of a legislative and not an executive nature.

...The power of treaties is vested jointly in the President and in the Senate, which is a branch of the legislature. From this arrangement merely, there can be no inference that would necessarily exclude the power from the executive class: since the senate is joined with the President in another power, that of appointing to offices, which as far as relate to executive offices at least, is considered as of an executive nature. Yet on the other hand, there are sufficient indications that the power of treaties is regarded by the constitution as materially different from mere executive power, and as having more affinity to the legislative than to the executive character.
...that treaties when formed according to the constitutional mode, are confessedly to have the force and operation of laws, and are to be a rule for the courts in controversies between man and man, as much as any other laws. They are even emphatically declared by the constitution to be “the supreme law of the land.”

...“The President shall be commander in chief of the army and navy of the United States, and of the militia when called into the actual service of the United States.”

There can be no relation worth examining between this power and the general power of making treaties. And instead of being analogous to the power of declaring war, it affords a striking illustration of the incompatibility of the two powers in the same hands. Those who are to conduct a war cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued, or concluded. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws...

“Tho’ several writers on the subject of government place that power (of making treaties) in the class of Executive authorities, yet this is evidently an arbitrary disposition. For if we attend carefully, to its operation, it will be found to partake more of the legislative than of the executive character, though it does not seem strictly to fall within the definition of either of them. The essence of the legislative authority, is to enact laws; or in other words, to prescribe rules for the regulation of the society. While the execution of the laws and the employment of the common strength, either for this purpose, or for the common defense, seem to comprise all the functions of the Executive magistrate. The power of making treaties is plainly neither the one nor the other. It relates neither to the execution of the subsisting laws, nor to the enaction of new ones, and still less to an exertion of the common strength. Its objects are contracts with foreign nations, which have the force of law, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subject, but agreements between sovereign and sovereign. The power in question seems therefore to form a distinct department, and to belong properly neither to the legislative nor to the executive. The qualities elsewhere detailed as indispensable in the management of foreign negotiations, point out the executive as the most fit agent in those transactions: whilst the vast importance of the trust, and the operation of treaties as Laws, plead strongly for the participation of the whole or a part of the legislative body in the office of making them.”

Comprehension Questions

1. According to Pacificus, which branch of government was the proper one to make a proclamation of United States neutrality in the war between France and Great Britain? Why?

2. According to Helvidius, which branch of government was the proper one to make a proclamation of United States neutrality in the war between France and Great Britain? Why?

3. With which position do you agree? To what extent, if at all, is this debate about the relative roles of the executive and the legislative branches relevant today?
Background: The “Great Writ” or habeas corpus has been an essential civil liberty guaranteed since Magna Carta. The Constitution denies Congress the power to suspend the privilege of a writ of habeas corpus except in very limited circumstances. In 1861, Abraham Lincoln invoked this power of Congress—which was not in session—to suspend habeas corpus in certain areas. By the spring of 1861, states of the Confederacy, including Virginia, had proclaimed their secession from the union. Maryland also seemed ready to secede, which would have left Washington, D.C. surrounded by Confederate territory. Since federal troops and supplies could only reach the capital through Maryland, President Lincoln determined to hold Maryland. Though he was reluctant to suspend habeas corpus there, he knew it was essential to keep roads and bridges open, and a mob had already attacked a Massachusetts regiment passing through Baltimore.

United States Constitution, Article I, Section 9, Clause 2

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Abraham Lincoln to General Winfield Scott, April 25, 1861

I therefore conclude that it is only left to the commanding General to watch, and await their [the Maryland state legislature’s] action, which, if it shall be to arm their people against the United States, he is to adopt the most prompt, and efficient means to counteract, even, if necessary, to the bombardment of their cities—and in the extremest necessity, the suspension of the writ of habeas corpus.

Abraham Lincoln to General Winfield Scott, April 27, 1861

You are engaged in repressing an insurrection against the laws of the United States. If at any point on or in the vicinity of the military line, which is now used between the City of Philadelphia and the City of Washington, via Perryville, Annapolis City, and Annapolis Junction, you find resistance which renders it necessary to suspend the writ of Habeas Corpus for the public safety, you, personally or through the officer in command at the point where the resistance occurs, are authorized to suspend the writ.

Abraham Lincoln Memorandum [May 17, 1861]

Unless the necessity for these arbitrary arrests [in Washington, D.C] is manifest, and urgent, I prefer they should cease.
Comprehension Questions

1. What is *habeas corpus* and why is it called the “Great Writ”? 
2. According to the Constitution, under what conditions can *habeas corpus* be suspended? 
3. To what extent did President Lincoln seem to be eager to suspend *habeas corpus*?
Handout B: Chief Justice Taney and the Merryman Ruling

Directions: Read the excerpt below of Taney’s opinion in the case and then answer the questions that follow.

Background: John Merryman was a prominent Baltimore-area planter and First Lieutenant in the Baltimore County Horse Guards. Maryland Governor Thomas Hicks had ordered Merryman to aid in the destruction of several bridges north of Baltimore to prevent troops from Pennsylvania from marching through Baltimore and inciting riots. Merryman was arrested in May, 1861, for being “an active secessionist sympathizer.” He was also charged with communication with the Confederates and with treason, and he was held, without a warrant, at Fort McHenry near Baltimore. Merryman wanted to be removed from prison and charged in open civilian court, and he quickly filed a petition for a writ of habeas corpus with Supreme Court Chief Justice Roger Taney, sitting as a circuit court judge. (The Supreme Court was not in session.)

Deciding the case, ex parte Merryman (1861) Taney issued the writ of habeas corpus and ordered General Cadwalader of Fort McHenry to appear in the circuit courtroom with Merryman in order to explain why he should remain in custody.

Cadwalader refused to appear, saying that Merryman was charged with treason, had admitted being ready to cooperate with those in rebellion against the United States, and that President Lincoln had suspended habeas corpus because it was necessary to do so for the public safety.

Chief Justice Taney’s opinion

As the case comes before me, therefore, I understand that the President not only claims the right to suspend the writ of Habeas Corpus himself, at his discretion, but to delegate that discretionary power to a military officer, and to leave it to him to determine whether he will or will not obey Judicial process that may be served upon him.

No official notice has been given to the courts of justice, or to the public, by proclamation or otherwise, that the President claimed this power, and had exercised it in the manner stated in the return. And I certainly listened to it with some surprise. For I had supposed it to be one of those points of constitutional law upon which there was no difference of opinion, and that it was admitted on all hands that the privilege of the writ could not be suspended, except by act of Congress…

The Constitution provides, as I have before said, that “no person shall be deprived of life, liberty, or property, without due process of law.” It declares that “the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”
It provides that the party accused shall be entitled to a speedy trial in a court of justice.

And these great and fundamental laws, which Congress itself could not suspend, have been disregarded and suspended, like the writ of habeas corpus, by a military order, supported by force of arms. Such is the case now before me, and I can only say, that if the authority which the Constitution has confided to the Judiciary Department and Judicial officers, may thus, upon any pretext or under any circumstances be usurped by the military power at its discretion, the people of the United States are no longer living under a government of laws, but every citizen holds life, liberty, and property at the will and pleasure of the Army officer, in whose Military District he may happen to be found.

In such a case my duty was too plain to be mistaken. I have exercised all the power which the Constitution and laws confer upon me, but that power has been resisted by a force too strong for me to overcome. It is possible, that the officer, who has incurred this grave responsibility, may have misunderstood his instructions, and exceeded the authority intended to be given him. I shall, therefore, order all the proceedings in this case, with my opinion, to be filed, and recorded in the Circuit Court of the United States for the District of Maryland, and direct the clerk to transmit a copy, under seal, to the President of the United States. It will then remain for that high officer, in fulfillment of his constitutional obligation to “take care that the laws be faithfully executed,” to determine what measures he will take to cause the civil process of the United States to be respected, and enforced.

Critical Thinking Questions

1. In what ways did Chief Justice Taney charge that President Lincoln had disregarded rights guaranteed to Merryman?

2. According to Taney, who has the power to suspend habeas corpus?

3. Put this passage from Taney’s opinion in your own words: “[I]f the authority which the Constitution has confided to the Judiciary Department and Judicial officers, may thus, upon any pretext or under any circumstances be usurped by the military power at its discretion, the people of the United States are no longer living under a government of laws, but every citizen holds life, liberty, and property at the will and pleasure of the Army officer, in whose Military District he may happen to be found.”

4. What did Taney order the clerk of the Circuit Court to do, and why?

5. In your own words, sum up the best argument you can to support President Lincoln’s suspension of habeas corpus. Then, sum up the best argument you can to support Taney’s position in ex parte Merryman. With which position, if any, do you agree? Explain your position.
Directions: Read the documents below and answer the questions that follow.

Background: In June of 1950, when the North Korean army invaded South Korea, the United States led a United Nations effort to support the South Korean military in repelling the invasion. The United States was involved in what was called a “police action” in Korea from 1950 – 1953. One result of the Korean conflict on the U.S. economy was to increase demand for steel production; steel was a necessary component of almost all weapons and other war materials. In 1951, collective bargaining talks broke down between the United Steelworkers of America and steel companies. The steelworkers union gave notice that its members would go on strike when the previous contract expired. In spite of efforts by such government agencies as the Federal Mediation and Conciliation Service and the Federal Wage Stabilization Board, labor and management could not come to agreement regarding terms and conditions of a new contract. President Harry Truman, in order to assure the continued production of vital steel supplies, issued Executive Order 10340 on April 8, 1952, directing the Secretary of Commerce to take possession of most of the nation’s steel mills and keep them running. The president’s action was not based on any statute. The next day he sent a message to Congress reporting his action, citing immediate peril to the national defense while American troops were fighting in Korea if steel production were to be interrupted by the strike. He also stated his intention to abide by any action Congress may take to address the emergency.

The steel companies challenged the validity of the president’s order, stating that it was not authorized by any act of Congress or by any provision of the Constitution. The District Court issued an injunction against the government’s seizure and operation of the steel plants, and the United States Supreme Court agreed to hear the case, Youngstown Sheet and Tube v. Sawyer (1952).

Excerpts from the Majority Opinion, Justice Hugo Black (6-3)

We are asked to decide whether the President was acting within his constitutional power when he issued an order directing the Secretary of Commerce to take possession of and operate most of the Nation’s steel mills. The mill owners argue that the President’s order amounts to lawmaking, a legislative function which the Constitution has expressly confided to the Congress, and not to the President. The Government’s position is that the order was made on findings of the President that his action was necessary to avert a national catastrophe which would inevitably result from a stoppage of steel production, and that, in meeting this grave emergency, the President was acting within the aggregate of his constitutional powers as the Nation’s Chief Executive and the Commander in Chief of the Armed Forces of the United States...

The President’s power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself. There is no statute that expressly authorizes the President to take possession of property as he did here. Nor is
there any act of Congress to which our attention has been directed from which such a power can fairly be implied…

Moreover, the use of the seizure technique to solve labor disputes in order to prevent work stoppages was not only unauthorized by any congressional enactment; prior to this controversy, Congress had refused to adopt that method of settling labor disputes…

It is clear that, if the President had authority to issue the order he did, it must be found in some provision of the Constitution. And it is not claimed that express constitutional language grants this power to the President. The contention is that presidential power should be implied from the aggregate of his powers under the Constitution. Particular reliance is placed on provisions in Article II which say that “The executive Power shall be vested in a President . . .”; that “he shall take Care that the Laws be faithfully executed”, and that he “shall be Commander in Chief of the Army and Navy of the United States.”

The order cannot properly be sustained as an exercise of the President’s military power as Commander in Chief of the Armed Forces…

[W]e cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation’s lawmakers, not for its military authorities…

Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President’s power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that “All legislative Powers herein granted shall be vested in a Congress of the United States . . .”

The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times… our holding [is] that this seizure order cannot stand.

**Excerpts from the Dissent, Chief Justice Fred Vinson**

In passing upon the question of Presidential powers in this case, we must first consider the context in which those powers were exercised.

Those who suggest that this is a case involving extraordinary powers should be mindful that these are extraordinary times. A world not yet recovered from the devastation of World War II has been forced to face the threat of another and more terrifying global conflict…

A review of executive action demonstrates that our Presidents have on many occasions exhibited the leadership contemplated by the Framers when they made the President Commander in Chief, and imposed upon him the trust to “take Care that the Laws be faithfully executed.” With or without explicit statutory authorization, Presidents have at such times dealt with national emergencies by acting promptly and resolutely to enforce legislative programs, at least to save those programs until Congress could act. Congress and the courts have responded to such executive
Handout C: Page 3

initiative with consistent approval... (Vinson provides a long list of presidential actions.)

In an action furnishing a most apt precedent for this case, President Lincoln, without statutory authority, directed the seizure of rail and telegraph lines leading to Washington. Many months later, Congress recognized and confirmed the power of the President to seize railroads and telegraph lines and provided criminal penalties for interference with Government operation. This Act did not confer on the President any additional powers of seizure. Congress plainly rejected the view that the President’s acts had been without legal sanction until ratified by the legislature. Sponsors of the bill declared that its purpose was only to confirm the power which the President already possessed. Opponents insisted a statute authorizing seizure was unnecessary, and might even be construed as limiting existing Presidential powers...

History bears out the genius of the Founding Fathers, who created a Government subject to law but not left subject to inertia when vigor and initiative are required...

There is no statute prohibiting seizure as a method of enforcing legislative programs...

The broad executive power granted by Article II to an officer on duty 365 days a year cannot, it is said, be invoked to avert disaster. Instead, the President must confine himself to sending a message to Congress recommending action. Under this messenger-boy concept of the Office, the President cannot even act to preserve legislative programs from destruction so that Congress will have something left to act upon.

Critical Thinking Questions

1. What was the main argument that President Truman advanced to support Executive Order 10340?
2. What was the main argument that the steel mill owners used against the executive order?
3. What are the main arguments advanced by Justice Black in denying the president’s authority to seize the steel mills?
4. What are the main arguments advanced by Chief Justice Vinson in his dissent?
5. If you had been in the Supreme Court, how would you have decided this case? Why? How does the principle of separation of powers help inform your decision?
Directions: Read the documents below and answer the questions that follow.

Background: On September 11, 2001, radical Islamic terrorists hijacked and crashed four passenger jets in New York, Washington, DC, and Pennsylvania. In all, 2,976 people, mostly civilians, lost their lives on that day. In the days following the attacks, U.S. and British intelligence confirmed that Al-Qaeda, led by Osama bin Laden, had planned and carried out the attacks. On September 20, President George W. Bush addressed Americans—many of whom had never heard of Al-Qaeda—in a televised speech before a joint session of Congress. Bush contrasted the September 11 attacks on civilian targets with December 7, 1941 when the Japanese bombed the naval base at Pearl Harbor. He explained that while Al-Qaeda was linked to more than sixty countries, its base was Afghanistan. He condemned the Taliban regime which controlled Afghanistan, and announced the beginning of a War on Terror. Early in the conflict, President Bush approved the use of military tribunals to try accused terrorists, including many individuals captured in Afghanistan. Bush said that the tribunals were needed to “to protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks.” A detention camp was set up at the US Naval base in Guantanamo Bay, Cuba.

Military tribunals are court proceedings used to try the enemy for violations of the laws of war. Military tribunals differ from criminal trials in some important ways. Military tribunals are not required to preserve many of the rights protected in the Bill of Rights. For example, the Sixth Amendment requires criminal trials to be open to the public, but military tribunals can be secret. Strict rules of evidence in the civilian justice system may not apply in a military tribunal. Decisions of military tribunals cannot be appealed in federal court. Rather, the president, as Commander in Chief, makes the final decision in reviewed cases.

Military tribunals have been a part of every war in U.S. history through World War II. During World War II, the Supreme Court unanimously upheld their use for unlawful combatants, even when the accused were U.S. citizens. At the time Bush was president, no president had ever asserted that the U.S. government should have to extend Bill of Rights protections to people who are not citizens of the United States and who are accused of making war against the U.S.

A little over a month after the first prisoners arrived at Guantanamo Bay, the first habeas corpus petition (a petition challenging detention) was filed. That case was dismissed. More petitions followed and were also dismissed. But in the years that followed, public unease with the indefinite detention of suspected terrorists at Guantanamo Bay grew. Inspectors at Guantanamo Bay reported ill prisoner treatment. The U.S. Supreme Court stopped dismissing habeas corpus petitions and progressively expanded the rights afforded to detainees at the camp.

The U.S. Supreme Court has decided several cases to help answer the question, to what extent, if at all, should suspected foreign terrorists be afforded constitutional due process protections.
Justice Sandra Day O'Connor

For purposes of this case, the enemy combatant that [the government] is seeking to detain is an individual who, it alleges, was part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who engaged in an armed conflict against the United States there. We therefore answer only the narrow question before us, whether the detention of citizens falling within that definition is authorized.

We necessarily reject the Government’s assertion that separation of powers principles mandate a heavily circumscribed role for the courts in such circumstances. Indeed, the position that the courts must forgo any examination of the individual case and focus exclusively on the legality of the broader detention scheme cannot be mandated by any reasonable view of separation of powers, as this approach serves only to condense power into a single branch of government. We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation’s citizens. *Youngstown Sheet & Tube* (1952). Whatever power the United States Constitution envisions for the Executive in its exchanges with other nations or with enemy organizations in times of conflict, it most assuredly envisions a role for all three branches when individual liberties are at stake. ... Likewise, we have made clear that, unless Congress acts to suspend it, the Great Writ of *habeas corpus* allows the Judicial Branch to play a necessary role in maintaining this delicate balance of governance, serving as an important judicial check on the Executive's discretion in the realm of detentions. ... it would turn our system of checks and balances on its head to suggest that a citizen could not make his way to court with a challenge to the factual basis for his detention by his government, simply because the Executive opposes making available such a challenge. Absent suspension of the writ by Congress, a citizen detained as an enemy combatant is entitled to this process...

*Hamdi also* unquestionably has the right to access to counsel in connection with the proceedings on remand...


The military commission [set up by the Bush administration to try detainees at Guantanamo Bay] lacks the power to proceed because its structures and procedures violate both the Uniform Code of Military Justice and the four Geneva Conventions signed in 1949...

Whether or not the President has independent power, absent congressional authorization, to convene military commissions, he may not disregard limitations that Congress has, in proper exercise of its own war powers, placed on his powers. See *Youngstown Sheet & Tube Co. v. Sawyer*, (1952) (Jackson, J., concurring).
Justice Anthony Kennedy (5-4)

...[T]he Government’s view is that the Constitution had no effect [in Guantanamo]..., at least as to noncitizens, because the United States disclaimed sovereignty in the formal sense of the term. The necessary implication of the argument is that by surrendering formal sovereignty over any unincorporated territory to a third party, while at the same time entering into a lease that grants total control over the territory back to the United States, it would be possible for the political branches to govern without legal constraint.

Our basic charter cannot be contracted away like this. The Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, not the power to decide when and where its terms apply. Even when the United States acts outside its borders, its powers are not “absolute and unlimited” but are subject “to such restrictions as are expressed in the Constitution.” *Murphy v. Ramsey*, (1885). Abstaining from questions involving formal sovereignty and territorial governance is one thing. To hold the political branches have the power to switch the Constitution on or off at will is quite another. The former position reflects this Court’s recognition that certain matters requiring political judgments are best left to the political branches. The latter would permit a striking anomaly in our tripartite system of government, leading to a regime in which Congress and the President, not this Court, say “what the law is.” *Marbury v. Madison*, (1803).

These concerns have particular bearing upon the Suspension Clause question in the cases now before us, for the writ of *habeas corpus* is itself an indispensable mechanism for monitoring the separation of powers. The test for determining the scope of this provision must not be subject to manipulation by those whose power it is designed to restrain...

We do consider it uncontroversial ... that the privilege of *habeas corpus* entitles the prisoner to a meaningful opportunity to demonstrate he is being [unlawfully] held... The *habeas* court must have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive's power to detain...

Within the Constitution’s separation-of-powers structure, few exercises of judicial power are as legitimate or as necessary as the responsibility to hear challenges to the authority of the Executive to imprison a person. [Thus, access to the writ for the detainees] is a necessity to determine the lawfulness of their status, even if, in the end, they do not obtain the relief they seek.

Critical Thinking Questions


2. How does the Court’s action in these cases help illustrate the principle of separation of powers during wartime?
Handout A: War and the Constitution

Directions: Read the following excerpts from the Constitution and then discuss the questions that follow.

Excerpts from Article I, Section 8:

The Congress shall have the power...

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Excerpts from Article I, Section 9:

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Excerpts from Article II, Section 2:

The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur...

Excerpts from Article III, Section 2:

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.
Critical Thinking Questions

1. What would be a good title for Article I, Section 8? Article I, Section 9?

2. In your judgment, which branch of government has greater war powers, the legislative or the executive? Use the Constitution to support your answer.

3. Does the president’s authority as commander in chief apply anywhere other than in military situations?

4. Read the First, Fourth, Fifth, and Sixth Amendments. Does the president’s authority as commander in chief empower him to act in ways that may violate individuals’ rights, such as those protected by the Bill of Rights? If so, under what circumstances?

5. What does “declare war” mean? Does war have to exist before it can be declared? Or must a declaration come before a war can exist?

6. Does the Necessary and Proper Clause increase Congress’s war powers? If so, how?

7. What is the role of the commander in chief?

8. What role might the judicial branch play during wartime?
Background: Following World War II, President Harry Truman announced that the United States would provide assistance to any nation in the world that was threatened by Communism. During what became known as the Cold War, the United States and its NATO allies were involved in a long period of political and military tension against the Soviet Union and its allies. This tension became outright military conflict in Korea (1950 – 53) and in Vietnam (1961 – 73). Because these conflicts during the presidencies of Kennedy, Johnson and Nixon seemed to be unwinnable and were fought without a declaration of war, a growing number of Americans became concerned that Congress was losing power in comparison with the commander in chief. Finally in 1973, Democrats in Congress led the charge to pass the War Powers Resolution by a sizeable majority (in the process overriding Republican President Richard Nixon’s veto). The law stipulated that the commander in chief could send U.S. armed forces into action only by authorization of Congress or if the United States were already under attack or serious threat. Within forty-eight hours of committing armed forces to military action, the president was required to notify Congress. Armed forces could not remain more than sixty days on foreign soil without congressional authorization of the use of military force or a declaration of war. Virtually every president since Nixon has expressed strategic and constitutional reservations about the War Powers Resolution.
Handout C: War Powers Resolution

**Directions:** Working in small groups, read and discuss the following 6 excerpts from the War Powers Resolution, putting each section in your own words.

<table>
<thead>
<tr>
<th>War Powers Resolution</th>
<th>In Your Own Words</th>
</tr>
</thead>
<tbody>
<tr>
<td>“It is the purpose of this [Act] to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities”</td>
<td>1.</td>
</tr>
<tr>
<td>“...The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces...”</td>
<td>2.</td>
</tr>
<tr>
<td>“The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities...”</td>
<td>3.</td>
</tr>
</tbody>
</table>
## War Powers Resolution

<table>
<thead>
<tr>
<th>War Powers Resolution</th>
<th>In Your Own Words</th>
</tr>
</thead>
<tbody>
<tr>
<td>“In the absence of a declaration of war... the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth— (A) the circumstances necessitating the introduction of United States Armed Forces; (B) the constitutional and legislative authority under which such introduction took place; and (C) the estimated scope and duration of the hostilities or involvement.”</td>
<td>4.</td>
</tr>
<tr>
<td>“Within sixty calendar days ... the President shall terminate any use of United States Armed Forces ... unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States.”</td>
<td>5.</td>
</tr>
<tr>
<td>“[A]t any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs...”</td>
<td>6.</td>
</tr>
</tbody>
</table>

7. What do you think the delegates at the Constitutional Convention would have thought about this law? Use the Constitution and its principles to support your answer.
Background: After the September 11, 2001 terrorist attacks on the United States, President George W. Bush demanded that the Taliban government in Afghanistan turn over Osama bin Laden to the U.S. as well as shut down Al-Qaeda training camps in the country. When the Taliban refused, Bush ordered strikes on the country. After hundreds of enemy combatants were captured on the battlefield in Afghanistan, in the U.S. and around the world, the question of how detainees in the War on Terror should be treated became problematic. Were accused terrorists criminals, and thus protected by constitutional due process, or were they illegal combatants (aggressors guilty of breaking laws of war)? President Bush’s answer to that question was that they were illegal combatants not entitled to due process protections of U.S. law, but subject to military tribunals.

Directions: Read the information in the middle of the chart. If the information could be used to support the argument that terrorist acts are acts of war, place a check on the left side of the chart. If the information supports the argument that terrorist acts are criminal acts, place a check on the right side of the chart. If the information supports neither, leave the row blank.

<table>
<thead>
<tr>
<th>Act of War</th>
<th>Criminal Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Military tribunals for enemy combatants with limited due process protections</td>
<td>All constitutional due process protections for accused persons</td>
</tr>
</tbody>
</table>

1. “Enemy combatants who without uniform come secretly through the lines for the purpose of waging war by destruction of life or property, are...generally deemed...to be offenders against the law of war subject to trial and punishment by Military Tribunals.” *Ex Parte Quirin* (1942)

2. Some terrorists are supported by governments who openly call for the destruction of other countries.

3. Congress never declared war against Afghanistan; it did, however, authorize the President to use military force against “those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”
4. When the hijackers boarded their four flights on September 11, 2001, they were not wearing Al-Qaeda uniforms or any military uniform; they were dressed like ordinary civilians.

5. Evidence presented at criminal trials will be made public in the U.S. and international press.

6. The North Atlantic Treaty Organization (NATO) invoked its charter for the first time in its history in response to the attacks: The September eleventh attacks were an attack on all the NATO allies.

7. Some, but not all, detainees at Guantanamo Bay are accused of (or admit to) planning the September 11 attacks. Others as suspected of planning or aiding in other terrorist acts.

8. Constitutional protections against self-incrimination should apply even against people who might have information about future terrorist attacks.

1. President Bush decided that accused terrorists were not entitled to due process protections, but would be tried in military tribunals. To what extent was this decision consistent with constitutional principles and historical precedent?

For further study: Research the following cases to learn what the Supreme Court has decided with respect to due process for detainees at Guantanamo Bay: *Hamdi v. Rumsfeld* (2004), *Hamdan v. Rumsfeld* (2006), and *Boumediene v. Bush* (2008).
Handout A: Universal Declaration of Human Rights (1948)

**Directions:** Complete the following activities in order to evaluate the Universal Declaration of Human Rights (UDHR) and compare it to United States Founding Documents.

1. Skim the UDHR just to get an impression of its contents and structure. What similarities and differences do you note between the UDHR and United States Founding Documents?

2. Which approach to thinking about rights is more enforceable? Why?

3. According to the 8th paragraph of the Preamble, who is responsible for securing the rights and freedom listed in the UDHR? By what means?

**Background:** In the final weeks of World War II, after the surrender of Germany and leading up to the eventual surrender of Japan, the Allies turned their attention to developing a worldwide peace-keeping organization. Such an attempt had occurred also at the end of World War I, but the League of Nations had not provided a lasting structure to make the Great War the “war to end war,” and “make the world safe for democracy” as President Woodrow Wilson had hoped. World leaders meeting in 1946 were determined to craft a more lasting and effective international forum—the United Nations. Among their goals, according to the official United Nations website, was to prepare “a road map to guarantee the rights of every individual everywhere.” The result of their two-year effort was the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly on December 10, 1948.

**Universal Declaration of Human Rights (1948)**

**PREAMBLE**

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,
Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

- All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

- Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

- Everyone has the right to life, liberty and security of person.

Article 4.

- No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

- Everyone has the right to recognition everywhere as a person before the law.

Article 7.

- All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.
Article 9.
• No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.
• Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.
• (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
• (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.
• No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.
• (1) Everyone has the right to freedom of movement and residence within the borders of each state.
• (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.
• (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
• (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.
• (1) Everyone has the right to a nationality.
• (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.
• (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
• (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
• (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.
• (1) Everyone has the right to own property alone as well as in association with others.
• (2) No one shall be arbitrarily deprived of his property.

Article 18.

• Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

• Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

• (1) Everyone has the right to freedom of peaceful assembly and association.
• (2) No one may be compelled to belong to an association.

Article 21.

• (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
• (2) Everyone has the right of equal access to public service in his country.
• (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

• Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

• (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
• (2) Everyone, without any discrimination, has the right to equal pay for equal work.
• (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
• (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

• Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

• (1) Everyone has the right to a standard of living adequate for the health and well-
being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26.**

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27.**

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28.**

- Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29.**

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30.**

- Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.
IN CONGRESS, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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 among Men, deriving their just powers from the consent of the governed, –That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.–Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world...
Handout C: Excerpts from the United States Constitution (1787)

Article I

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this
Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto Law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay...

Article III

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases
of admiralty and maritime jurisdiction;–to controversies to which the United States shall be a party;–to controversies between two or more states;–between a state and citizens of another state;–between citizens of different states;–between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained.
Handout D: United States Constitution, Amendments 1 - 27

Amendment I (1791): Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II (1791): A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III (1791): No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV (1791): The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V (1791): No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI (1791): In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII (1791): In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII (1791): Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX (1791): The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X (1791): The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.
Amendment XI (1798): The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Amendment XII (1804): The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;–The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;–the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII (1865):

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.”

Amendment XIV (1868):

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their
respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV (1870):

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI (1913): The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census of enumeration.

Amendment XVII (1913): The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.
Amendment XVIII (1919):

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Amendment XIX (1920): The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX (1933):

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission.

Amendment XXI (1933):

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating
liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Amendment XXII (1951):

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the Congress.

Amendment XXIV (1964):

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV (1967):

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall
be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI (1971):

Section 1. The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XXVII (1992): No law varying the compensation for the services of the Senators and Representatives shall take effect until an election of Representatives shall have intervened.
**Handout E: Graphic Organizer Comparing the UDHR with U.S. Founding Documents**

**Directions:** Analyze the passages from the Universal Declaration of Human Rights and compare/contrast with United States Founding Documents shown on Handouts B, C, and D. If the same/similar concept listed in the UDHR is also addressed in a U.S. Founding Document, show where it is located. Some items are done for you as examples. If a concept is not listed in a U.S. founding documents, leave the cell(s) blank.

After completing the table, answer the questions that follow.

<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>Preamble</strong></td>
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<tr>
<td>...recognition of the inherent dignity and of the equal and inalienable rights...</td>
<td>Paragraph 2 “endowed by their Creator with certain unalienable rights”</td>
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<tr>
<td></td>
<td></td>
<td>Paragraph 2 “That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it.”</td>
<td>Amendment 1</td>
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<tr>
<td>...freedom of speech and belief...</td>
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<tr>
<td>...if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression...</td>
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<td>...promote the development of friendly relations between nations...</td>
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<tr>
<td>...fundamental human rights...</td>
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<td>and in the equal rights of men and women...</td>
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</table>
...common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge...

<table>
<thead>
<tr>
<th>Article 1</th>
<th>Article 3</th>
<th>Article 4</th>
<th>Article 5</th>
<th>Article 7</th>
<th>Article 10</th>
</tr>
</thead>
<tbody>
<tr>
<td>All human beings are born free and equal in dignity and rights...</td>
<td>Everyone has the right to life, liberty and security of person.</td>
<td>No one shall be held in slavery or servitude...</td>
<td>No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</td>
<td>All are equal before the law and are entitled without any discrimination to equal protection of the law...</td>
<td>Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.</td>
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</table>
### Article 11

...public trial at which he has had all the guarantees necessary for his defense... No one shall be held guilty of any [act which was not a crime] at the time when it was committed.

### Article 13

Everyone has the right to freedom of movement and residence ... the right to leave... and to return to his country.

### Article 17

Everyone has the right to own property alone as well as in association with others.

### Article 19

...the right to freedom of opinion and expression; ... and to seek, receive and impart information and ideas through any media and regardless of frontiers.

### Article 20

...the right to freedom of peaceful assembly and association.

### Article 21

...the right to take part in the government of his country, directly or through freely chosen representatives... The will of the people shall be the basis of the authority of government...
<table>
<thead>
<tr>
<th>Article 22</th>
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<tbody>
<tr>
<td>...social and cultural rights indispensable for his dignity and the free development of his personality.</td>
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<tr>
<th>Article 23</th>
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<tr>
<td>...the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment...</td>
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<table>
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<tr>
<th>Article 25</th>
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<td>...the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, ... security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control... Motherhood and childhood are entitled to special care and assistance.</td>
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<tr>
<th>Article 26</th>
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<td>Everyone has the right to education...</td>
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<table>
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<tr>
<th>Article 29</th>
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<tbody>
<tr>
<td>Everyone has duties to the community in which alone the free and full development of his personality is possible...</td>
</tr>
</tbody>
</table>
1. One of the foundational principles of the U.S. Constitution is the principle of limited government, that people are best able to pursue happiness when government is confined to those powers which protect their life, liberty, and property. Based on your study of the UDHR, to what extent, if at all, is this document based on the same premise?

2. You previously noted that UDHR requires that “every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.” To what extent, if at all, is this expectation enforceable?

3. The U.S. Founding Documents set certain limits on government power in order to promote the rights and liberties of the people. To what extent, if at all, are these limits on government power enforceable?

4. In general, what kinds of rights are listed in the UDHR, but not listed in the U.S. Founding Documents? To what extent, if at all, does the absence of those rights from the U.S. Founding Documents mean that those rights are less important to Americans?
Handout A: Civic Virtues and the Constitution

Directions: Read each of the following quotations and decide what civic virtues it requires of citizens. Consider the following virtues: Courage, Initiative, Honor, Justice, Moderation, Perseverance, Respect, Responsibility, Resourcefulness, and Vigilance. Some quotations may have more than one answer.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several states. (Article I)
   Civic Virtue(s): ________________________________

2. Congress shall have the power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. (Article I)
   Civic Virtue(s): ________________________________

3. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it. (Article I)
   Civic Virtue(s): ________________________________

4. No bill of attainder or ex post facto law shall be passed. (Article I)
   Civic Virtue(s): ________________________________

5. Neither shall any person be eligible to [the office of President] who shall not have attained to the age of thirty five years. (Article II)
   Civic Virtue(s): ________________________________

6. Before [the President] enter on the execution of his office, he shall take the following oath or affirmation:—“I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.” (Article II)
   Civic Virtue(s): ________________________________
7. The trial of all crimes, except in cases of impeachment, shall be by jury. (Article III)

Civic Virtue(s):

8. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. (Article IV)

Civic Virtue(s):

9. The United States shall guarantee to every state in this union a republican form of government. (Article IV)

Civic Virtue(s):

10. The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution. (Article V)

Civic Virtue(s):

11. No religious test shall ever be required as a qualification to any office or public trust under the United States. (Article VI)

Civic Virtue(s):

12. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. (Amendment I)

Civic Virtue(s):

13. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (Amendment VIII)

Civic Virtue(s):

14. The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Civic Virtue(s):
Handout B: Identifying Civic Virtues in Current Events

Directions: For the next week (or time period designated by your teacher) conduct a “scavenger hunt” for examples of civic virtue in everyday life. You may describe a situation that happens in your family or another event that you witness, or you may use online, broadcast, or print media to find examples of civic virtue in the news. For each event that you find, complete the following summary and attach the clipping/printed online article. Be prepared to share your stories with your class.

1. Who? (Exercise caution regarding the use of a person’s real name; it may not always be advisable to do so.)

2. When did the event happen?

3. Where did the event happen?

4. What happened? Write a short narrative to explain the facts.

5. Why did the event happen?

6. What civic virtue was demonstrated and how did the individual(s) do so?

7. What short-term and long-term results occurred or seem likely to occur?

8. Explain your personal reaction to the incident described.
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