THE TRADITION of RIGHTS

READINGS, ACTIVITIES, AND HANDOUTS
Students should read **Handout A: Articles of Confederation: March 1, 1781**. They should then complete **Handout B: Evaluation of the Articles of Confederation** to analyze a passage from a George Washington letter in which he expresses his frustration at the inadequacies of the Articles of Confederation.
Using **Handout C: Resolution of the General Assembly of Virginia, January 21, 1786**, students will examine the proposal from the Virginia legislature calling for the states to send delegates to a convention to establish rules for interstate commerce. They should then read **Handout D: Excerpts from the Introduction to Annapolis Convention Report by James Madison** to review Madison’s explanation of the purpose and results of the Annapolis Convention. Finally, students should read **Handout E: Excerpts from the Annapolis Convention Report** to analyze the report from the Annapolis Convention, in which delegates convey the urgency of state cooperation in revising the Articles of Confederation.
Handout F: Articles of Confederation One-Pager provides a summary of the strengths and weaknesses of America’s first constitution, the Articles of Confederation. Use Handout F along with Handouts G: Shays’s Rebellion Participants and Locations, Handout H: Role Play Outline, and Handout I: Analysis of Shays’s Rebellion to provide classes with a role play in which they analyze the purposes of a central government, evaluate the Articles of Confederation, reenact Shays’s Rebellion, and reflect on its results.
Students should review **Handout J: Main Headings from the Vices of the Political System of the United States** and answer the critical thinking question prior to reading **Handout K: Vices of the Political System of the United States** in which Madison details the inadequacies of the Articles of Confederation and foreshadows the framework of the Constitution of 1787.
The newly independent colonies’ first attempt at forming a legal relationship was with the Articles of Confederation. This document was adopted by the Second Continental Congress in November 1777 and ratified by the states in 1781.

The document set forth “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.” These states agreed to enter into “firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare.” The document does not reference a “nation,” or a “national government.”

Rather than a “nation,” the Articles created a “confederacy,” or an association of sovereign states. Every state was its own country, except with respect to those powers expressly delegated to the U.S. Congress, and it agreed to do certain things for and with the other states in the confederacy. Several provisions would later go on to be enshrined in the U.S. Constitution. For example, states would have to give “full faith and credit” to the records, acts, and proceedings of other states. The “privileges and immunities” of U.S. citizens would be the same in all states. Fugitives who were caught in one state would be delivered up to face justice when required in another state. Some powers that would later be given outright to the U.S. Congress under the U.S. Constitution, such as coining money and regulating its value, would go to the Confederation Congress, but only with the consent of 9 of the 13 states.

But that is where the very few similarities end. Any changes to the Articles themselves needed every state to agree. There was no national executive department or national court system. The Confederation Congress could not effectively collect taxes or raise an army, and interstate commerce was challenging. In the years following, states issued their own currency and put tariffs on each other’s goods.

By the mid-1780s, more and more people were becoming concerned about problems with the Articles of Confederation. A major worry was that the weak central government did not have the power to make uniform commercial laws for the country. After representatives from Virginia and Maryland met at George Washington’s Mt. Vernon to discuss navigation of the Potomac River, those two states called for a convention to be held in Annapolis to discuss commercial regulation. This meeting, called the Annapolis Convention, was held in September of 1786.

Five of the thirteen states sent representatives. These delegates included James Madison from Virginia, Alexander Hamilton from New York, and Pennsylvania’s John Dickinson. The Annapolis Convention decided to call a future convention for the purpose of revising the Articles of Confederation. All of the states were invited to send delegates to this convention, which would begin in Philadelphia the next May. The Confederation Congress passed a resolution urging states to send delegates. This meeting would later become known as the Constitutional Convention.

After the Annapolis Convention but before the Philadelphia Convention, the events of Shays’s Rebellion further solidified in some people’s minds the need for a stronger central government. Western Massachusetts farmers were angry with their state government’s refusal to pass debt relief and issue paper money. Daniel Shays, a former
Continental Army Captain, led a militia which stormed court buildings so action against debtors could not proceed. The militia also released debtors from prison. Eventually, a stronger army organized by the state crushed the rebellion. But many worried about similar, smaller uprisings that happened in neighboring states.

Founder John Jay noted that some in Massachusetts who had previously opposed the Philadelphia Convention were now speaking out in favor of revising the Articles. George Washington, already in favor of revising the Articles, was among those who were worried about protests that disregarded the rule of law. He was particularly upset that the rebellion would be a sign to the world that people were not fit for self-government, and their newfound independence would fail on the world stage.

Washington wrote in 1786, “The accounts which are published of the commotions [of Shays’s Rebellion]...exhibit a melancholy proof of what our trans-Atlantic foe has predicted; and of another thing perhaps, which is still more to be regretted, and is yet more unaccountable, that mankind when left to themselves are unfit for their own Government. I am mortified beyond expression when I view the clouds that have spread over the brightest morn that ever dawned upon any Country... To be more exposed in the eyes of the world, and more contemptible than we already are, is hardly possible.” He also concluded that if the government “shrinks, or is unable to enforce its laws...anarchy & confusion must prevail.”

But not everyone saw in Shays’s Rebellion the need for a stronger law enforcement. In response to the events, Thomas Jefferson wrote to James Madison, “Malo periculosam, libertatem quam quietam servitutem.” [“I prefer the tumult of liberty to the quiet of servitude.”] Even this evil is productive of good. It prevents the degeneracy of government, and nourishes a general attention to the public affairs. I hold it that a little rebellion now and then is a good thing, and as necessary in the political world as storms in the physical.” He went on to warn: “Unsuccessful rebellions indeed generally establish the encroachments on the rights of the people which have produced them.” Good governors, he concluded, should not punish rebellions too harshly.

The Philadelphia meeting proceeded as planned in the summer of 1787. Washington came out of retirement in order to preside over the Convention, and Madison was the chief author of the new Constitution. It provided a new, much stronger central government, with a national legislature empowered — among many other things — to regulate interstate commerce.

Critics of the Convention argue that it was written mainly to allow wealthy elites to control government and use the system of law to protect their economic interests. They point out that the only individuals who took part in the Convention, which was carried out in secret, were wealthy, land-owning white men. Therefore, they argue, the resulting document protected only the interests of wealthy, land-owning white men. They argue that the interests of those not invited to the Convention: enslaved Africans, indentured servants, women, and struggling farmers such as Daniel Shays, were not of concern to the delegates.

Questions remained. Was Shays’s Rebellion a symptom of weak government and a sign of the need for revision, or simply an excuse for elites to gain greater power? The stronger central government created under the U.S. Constitution involved trade-offs. The debate over proper limits on the power of the central government would continue into the ratification debate and continues just as intensely to the present-day.
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, 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; 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 them 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
- John Walton

**Maryland**
- Edward Telfair
- Edward Langworthy
- John Hanson
- Daniel Carroll

**Georgia**
- John Walton
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Massachusetts Bay
John Hancock
Samuel Adams
Elbridge Gerry
Francis Dana
James Lovell
Samuel Holten

New Hampshire
Josiah Bartlett
John Wentworth Jr.

New Jersey
John Witherspoon
Nathaniel Scudder

New York
James Duane
Francis Lewis

North Carolina
John Penn
Cornelius Harnett
John Williams

Pennsylvania
Robert Morris
Daniel Roberdeau
Jonathan Bayard Smith
William Clingan
Joseph Reed

Rhode Island and Providence Plantations
William Ellery
Henry Marchant
John Collins

South Carolina
Henry Laurens
William Henry Drayton
John Mathews
Richard Hutson
Thomas Heyward Jr.

Virginia
Richard Henry Lee
John Banister
Thomas Adams
John Harvie
Francis Lightfoot Lee
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: Committee of Detail—Executive Power

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?
Handout E: Excerpts from the Annapolis Convention Report


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...
Handout E: Page 2

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?
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.
Handout F: Page 2

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:**

**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.
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 examplified 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 synonimous. 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?
Handouts B–K Answer Keys

Handout B: Evaluation of the Articles of Confederation

1. Accept reasoned answers. Students should make the following points: Though America won the Revolutionary War against Great Britain, Washington thought the union was not properly managing its affairs. Jealousy and competition between the states made the confederation to be a nation in name only. It was essential to establish just principles for trade and other matters of national concern, and a central controlling power would be needed in order to do so.

Handout C: Resolution of the General Assembly of Virginia, January 21, 1786

1. To consider trade within the United States and determine whether a uniform system of commercial regulations would be beneficial, and to make a report on the meeting to all participating states.

2. When enacted and unanimously ratified by the United States in Congress.

Handout D: Excerpts, Introduction to Annapolis Convention Report by James Madison

1. Madison had served as both a member of the Revolutionary Congress, and a member of the Virginia legislature. These positions helped Madison see the problems of the Confederation system from both a national level and a state level.

2. The convention’s formal title states that the objective was “to remedy the defects of the Federal Government.” More specifically, the objective was “to devise and report a uniform system of commercial regulations.”

3. “Being, however, very partially attended...” Only 5 of 13 states sent delegates.

4. The Annapolis Convention “recommend[ed] a convention, with enlarged powers, to be held the year following, in the city of Philadelphia.”

Handout E: Excerpts, Annapolis Convention Report

1. Accept reasoned responses. Sample answer: The problems of the confederacy are so severe, obvious, and well-known throughout the country that a meeting must be held to deliberate and suggest solutions. The delegates at the Annapolis Convention unanimously request that their own states participate in a convention to be held in Philadelphia the following year, and that they work to persuade other states to also send delegates.

2. The report uses powerful language to convey a sense of urgency:
   - Deeply impressed...
• Magnitude and importance of the object confided to them...
• an expression of their earnest and unanimous wish, that speedy measures be taken, to effect a general meeting...
• 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...
• 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...
• unanimous conviction

Handout I: Analysis of Shays's Rebellion and Handout J: Main Headings, Vices of the Political System of the United States

Accept reasoned responses.

Handout K: Vices of the Political System of the United States, Full Text

1. Madison referred to the Articles of Confederation.

2. Law must be just, developed through representative process, stable & predictable, understandable, enforceable

3. Injustice of the law is even more alarming than multiplicity and mutability. Unjust laws call into question whether it is even true that the majority are the safest guardians of public good and private rights. The causes of unjust laws lie in the representative bodies (sometimes representatives are not even motivated by virtue, but by selfish ambition) and in the people themselves (majorities sometimes violate the rights of minorities).

4. The fundamental principle of republican government is that majorities are the safest guardians of public good and private rights. If a system of government calls this principle into question, then self-government and liberty are at risk.

5. In both this document and in Federalist No. 10, Madison examines the capacity of man for self-government and writes that, while virtue is necessary for self-government, the form and structure of a system of government must be designed to minimize opportunities for people to act on selfish motives in government.

6. Accept reasoned responses regarding whether political parties are inevitable.

7. The Constitution was intended to provide a structure that would allow ambition to counteract ambition. The system, though, is still dependent on fallible humans.
Provide students with Handout A: The U.S. Constitution of 1787. This document is the version ratified in 1787. Then ask students to use Handout B: Executive Comparison to compare the U.S. Constitution to the Articles of Confederation with respect to the presidency and the executive power. Finally, have students compare the August 6 draft of the constitution to the Constitution in its final form at the end of the convention, with respect to the executive branch in Handout C: Committee of Detail—Executive Power.
Using **Handout D: Meeting the Framers—A Reunion Social in 1840**, have students conduct a simulated reunion as it might have appeared if the Framers had been able to meet in 1840. Each student will impersonate a Framer and develops a business card to illustrate his life’s contributions.
Discuss the main compromises reached in the Constitutional Convention including the Great Compromise, the Three-Fifths Compromise, the Commerce Compromise, the Slave Trade Compromise, and the election of the president. Have students research and summarize these compromises using http://teachingamericanhistory.org/convention/themes on Handout E: Bundle of Compromises.
Using **Handout F: Excerpts from Federalist No. 39**, have students analyze the “partly national, partly federal” nature of the Union. Then discuss Madison’s understanding of federalism as a large group.
Have students review the table with the names and states of some leading Framers and Founders who held slaves at some point in their lives in Handout G: Slavery and the Founders. In Handout H: Emancipation in the Early Republic, have students review the information in the table on page that shows the state-by-state limitations of slavery. They should then complete the map to identify those states that abolished slavery outright, those that implemented gradual emancipation laws, and those that abolished slavery through the ratification of the Thirteenth Amendment to the Constitution.

Students should then analyze and summarize the arguments for and against slavery using Handout I: Founders Quotes on Slavery.

To help students understand the discussions about slavery and the slave trade during the Constitutional Convention, have them participate in a readers’ theater. The students will read directly from the text of Madison’s Notes on the Convention. They will then have to adapt the script from third to first person before the performance. Handout J: Readers’ Theater – Convention Debate on Slave Trade provides the list of participants and the text from Madison’s Notes that the students can adapt.

Finally, in Handout L: Mason’s Objections to the Constitution, have students analyze Virginian George Mason’s problems with the Constitution, which led to him not signing the document. Students will complete a graphic organizer to analyze the constitutional principles represented in Mason’s objections to the Constitution, and predict how Mason might evaluate the Constitution if he could do so today.
During what historians often call the “critical period” after the American Revolution, many were concerned that the Articles of Confederation were inadequate for the states to grow commercially and economically. Not only that, but George Washington was especially worried that a disparate group of states would not nurture the uniquely American character he had fought for in the Revolution. In response to the recommendation of the Annapolis Convention, the Confederation Congress announced a meeting to revise the Articles of Confederation. This meeting would take place in Philadelphia during the summer of 1787.

But not everyone was convinced that the Articles needed revision — or even that the goals of the Convention were admirable. Patrick Henry from Virginia, for example, said that he “smelt a rat” and was not interested in attending. Later, Henry would go on become a leading Anti-Federalist (or, opponent of the Constitution). The Anti-Federalists were suspicious of strong, centralized power. They feared the cost to liberty of a national government with vast new powers over all the states and the people.

These concerns notwithstanding, every state except Rhode Island sent delegates. Fifty-five men in all would participate in the Convention, including George Washington of Virginia, Alexander Hamilton of New York, and Benjamin Franklin of Pennsylvania. Although they were leading statesmen and are often associated with the Constitution today, Thomas Jefferson and John Adams were not at the Convention. They were serving in diplomatic posts in Europe at the time. They did, however, share their thoughts and opinions on the Convention’s activities in correspondence.

James Madison of Virginia was the first to arrive at Independence Hall in Philadelphia in May, 1787. The 36-year old had already done a great deal of thinking about what he thought the new government should look like, and had a plan ready to present. He and many others were convinced that one needed change was the creation of an energetic and independent executive. Such an institution, which was missing from the Articles of Confederation, would be a check against legislative usurpation (Congress overstepping its powers) and bad laws, and give the United States a leader in its relationships with foreign nations.

The Convention delegates were a varied group, though, and almost no ideas were going to be acceptable to all right away. Many feared the tyranny of a king. It took them almost the entire summer to agree on Article II and the office of President as it exists now — an individual (rather than an executive council), elected through the Electoral College (rather than appointed by the legislature) for a four-year term. (Many years later, the Twenty-Second Amendment ratified in 1951 would limit the president to two four-year terms.)

In the end, the security that George Washington would be the nation’s first president eased the concerns of most delegates. Washington had proven his virtue many times over, and they knew he would shape the role for future generations with prudence.

Divisions emerged among the delegates regarding other issues as well. For example, there was a rift between those from large states and small states. Should all states have equal representation in the national legislature, or should states be represented based on their population? The idea of equal representation was favored, not
surprisingly, by small states. Delegates from large states objected that equal representation would allow a small minority of people to block laws the vast majority of people in the country wanted. But delegates from small states argued that proportional representation would give a few big states all the power and make the small states and their concerns practically irrelevant.

The “Great Compromise,” suggested by Roger Sherman of Connecticut, created a bi-cameral (two-chamber) legislature where the states would be represented equally in one chamber, and by population in the other. The states would have two Senators each, selected by state legislatures; the states would also send a number of Representatives to the House of Representatives based on their state’s population. This compromise preserved the federal character of Congress and added a national one: The states would be represented in the Senate, and the people of the United States of America would be represented in the House of Representatives.

(More than a century later, one key aspect of this compromise would be undone with the Seventeenth Amendment. That amendment changed the way Senators were selected, making them elected by the people in each state. State governments would no longer be represented in the national legislature at all.)

Another issue on which the Convention compromised was slavery. The Northwest Ordinance, passed by the Confederation Congress, had banned slavery in the new territories. Southern delegates feared the new government would try to regulate slavery or ban it outright. The delegates eventually agreed that Congress would not be able to interfere with “the importation of...persons” until 1808. (Congress indeed banned the international slave trade in 1808.) They also compromised on how slave-holding states would count enslaved persons for the purposes of taxation and representation. The Three-Fifths Compromise allowed Southern states to count three-fifths of their slave populations for purposes of taxation and representation. It did not, as is sometimes said, put into law that enslaved persons were three-fifths human.

Wishing to have one nation, anti-slavery states accepted a union with slave-holding states. The Three-Fifths Compromise gave the South increased political power in Congress, by allowing them to count three-fifths of their slave population towards representation. Proponents of slavery would have had even more political power, however, if those states had been able to count every enslaved person towards population.

Many fault the Convention for failing to abolish slavery right then and there. As a group, the Founders were conflicted about slavery. Many of them knew it was evil. The delegates put the creation of one nation ahead of the desire many had to do away with what they knew was a terrible and unjust violation of the very natural or inalienable rights the Revolution was fought to secure. It had already been done away with in some places, and they hoped that it would die out in future generations. They did not see a way to take further action against slavery in their lifetimes, though many freed their slaves after their deaths. They put their hopes in later generations to do something about slavery.

The Constitutional Convention and the Constitution it produced were truly unique and monumental in history. Hamilton wrote in Federalist No. 1 that never before in the history of the world had a nation been founded on reflection and choice, rather than force. His fellow Federalist Papers author James Madison wrote in Federalist No. 37 about the uniqueness
of the Constitution’s history. In effect, one form of government had been abolished and replaced with another, and the rule of law prevailed. Not a single shot had been fired; not a single “enemy of the revolution” had been put to death, not a single life had been lost. The Founding of the United States of America was and remains to this day truly exceptional in human history.
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.
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
Handout A: Page 9

diminished during the period for which he shall have been
elected, and he shall not receive within that period any other
emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take
the following oath or affirmation:—"I do solemnly swear (or
affirm) that I will faithfully execute the office of President of
the United States, and will to the best of my ability, preserve,
protect and defend the Constitution of the United States."

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
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.

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
committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

**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 attained.

**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 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
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,

<table>
<thead>
<tr>
<th>State</th>
<th>Signatures</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>G. Washington</strong></td>
<td>Presidt. and deputy from Virginia</td>
</tr>
<tr>
<td><strong>New Hampshire</strong></td>
<td>John Langdon, Nicholas Gilman</td>
</tr>
<tr>
<td><strong>Massachusetts</strong></td>
<td>Nathaniel Gorham, Rufus King</td>
</tr>
<tr>
<td><strong>Connecticut</strong></td>
<td>Wm: Saml. Johnson, Roger Sherman</td>
</tr>
<tr>
<td><strong>New York</strong></td>
<td>Alexander Hamilton</td>
</tr>
<tr>
<td><strong>New Jersey</strong></td>
<td>Wil: Livingston, David Brearly, Wm. Paterson, Jona: Dayton</td>
</tr>
<tr>
<td><strong>Pennsylvania</strong></td>
<td>B. Franklin, Thomas Mifflin, Robt. Morris, Geo. Clymer, Thos. FitzSimons, Jared Ingersoll, James</td>
</tr>
<tr>
<td><strong>Delaware</strong></td>
<td>Geo: Read, Gunning Bedford jun, John Dickinson, Richard Bassett, Jaco: Broom</td>
</tr>
<tr>
<td><strong>Maryland</strong></td>
<td>James McHenry, Dan of St Thos. Jenifer, Danl Carroll</td>
</tr>
<tr>
<td><strong>Virginia</strong></td>
<td>John Blair—, James Madison Jr.</td>
</tr>
<tr>
<td><strong>North Carolina</strong></td>
<td>Wm. Blount, Richd. Dobbs Spaight, Hu Williamson</td>
</tr>
<tr>
<td><strong>South Carolina</strong></td>
<td>J. Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler</td>
</tr>
<tr>
<td><strong>Georgia</strong></td>
<td>William Few, Abr Baldwin</td>
</tr>
</tbody>
</table>
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?
Handout C: Committee of Detail—Executive Power

**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></th>
<th>August 6 Committee of Detail Report</th>
<th>Article II, U.S. Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Single or plural executive</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Term of office</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Method of election</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Re-election</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>State of the Union report</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Responsibility to faithfully execute the law</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Appointment of officials</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Receiving ambassadors</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Power to grant reprieves and pardons</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>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.)
Handout D: Page 2

Suggestions/Expectations for Business Card Information

Name

Address (Students may exercise creative license if necessary here)

Occupation

Significant affiliations or titles

Contributions during Revolutionary Era

Contributions during Constitutional Convention

Most noteworthy characteristics/interesting facts

Contributions after the Convention

Quotes

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
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.

**Slaveholders® Among Some Prominent 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>George Read</td>
<td>Delaware</td>
<td>Yes</td>
</tr>
<tr>
<td><em>Button Gwinnett</em></td>
<td>Georgia</td>
<td>No</td>
</tr>
<tr>
<td><em>Charles Carroll</em></td>
<td>Maryland</td>
<td>No</td>
</tr>
<tr>
<td>Daniel Carroll</td>
<td>Maryland</td>
<td>Yes</td>
</tr>
<tr>
<td><em>Samuel Chase</em></td>
<td>Maryland</td>
<td>No</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><em>John Hancock</em></td>
<td>Massachusetts</td>
<td>No</td>
</tr>
<tr>
<td><em>John Jay</em></td>
<td>New York</td>
<td>No</td>
</tr>
<tr>
<td>William Blount</td>
<td>North Carolina</td>
<td>Yes</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 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>Benjamin Rush</td>
<td>Pennsylvania</td>
<td>No</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>Edward Rutledge</td>
<td>South Carolina</td>
<td>No</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>Patrick Henry</td>
<td>Virginia</td>
<td>No</td>
</tr>
<tr>
<td>Thomas Jefferson</td>
<td>Virginia</td>
<td>No</td>
</tr>
<tr>
<td>Richard Henry Lee</td>
<td>Virginia</td>
<td>No</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*
**Handout H: Map—Emancipation in the Early Republic**

**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 York before 1799 remained enslaved for life. An 1846 law abolished slavery permanently.</td>
</tr>
<tr>
<td>1865</td>
<td>Delaware</td>
<td></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>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

_____________________________________________________

_____________________________________________________

_____________________________________________________

_____________________________________________________

that the nature of our climate, and the flat, swampy situation of our country, obliges us to cultivate our lands with negroes, and that without them South Carolina would soon be a desert waste.” – Charles Cotesworth Pinckney, South Carolina Ratifying convention, 1788

11. “Slavery is such an atrocious debasement of human nature, that its very extirpation, if not performed with solicitous care, may sometimes open a source of serious evils.” – Benjamin Franklin, “An Address to the Public from the Pennsylvania Society” 1789

12. “…[W]hatever be their [Negroes’] 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.” – Thomas Jefferson, “Letter to Henri Gregoire”, 1809

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

14. “They [Africans] certainly must have been created with less intellectual power than the whites, and were most probably intended to serve them, and be the instruments of their cultivation.” – Charles Pinckney, 1821
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
Tuesday, August 21

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]

Wednesday, August 22

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.
Handout J: Page 6

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
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.
**Mason’s Objection**

<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>
<td></td>
</tr>
<tr>
<td>2. In the House of Representatives there is only the shadow of representation; laws may be made by people who do not have the proper information or the confidence of the people.</td>
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<tr>
<td>3. Senate not elected directly by the people and not answerable to them; Senate has too much power and there is no effective check on them.</td>
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<td></td>
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<tr>
<td>4. National courts could destroy the state courts; rich people could use the federal courts to oppress and ruin the poor.</td>
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<tr>
<td>5. No council of advisors for the president; the president could be overly influenced by the Senate.</td>
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<tr>
<td>6. The president has unlimited power to pardon for crimes, including treason.</td>
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<tr>
<td>7. All treaties are the supreme law of the land, and are created by the president with advice and consent of the Senate. The House of Representatives, the only branch directly answerable to the people, is not part of the treaty-making process.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mason's Objection</td>
<td>A. Constitutional Principle</td>
<td>B. Constitutional Reference</td>
</tr>
<tr>
<td>-------------------</td>
<td>-----------------------------</td>
<td>-----------------------------</td>
</tr>
<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>
<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>
<td></td>
<td></td>
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<tr>
<td>10. States cannot levy export taxes on their own exports.</td>
<td></td>
<td></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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</tr>
</tbody>
</table>
Handouts B–C Answer Keys

Handout B: Executive Comparison Answer Key

1. Recent colonial experience had led members of the Second Continental Congress to be suspicious of the abuses of power committed by the king of Great Britain, a strong executive.

2. Article II of the Constitution creates a strong executive, who is not a member of the Congress, and who holds office for four years. The president is not chosen by the Congress but by the voters through a unique body that has come to be called the Electoral College. Section 2 of Article II details the powers of the president, making this individual the commander in chief of the military and the leader of foreign policy, among other responsibilities.

3. The challenges experienced due to a weak central government caused leading Americans to see the need for a strong but limited chief executive.

Handout C: Committee of Detail—Executive Power Answer Key

<table>
<thead>
<tr>
<th></th>
<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>Single</td>
<td>Single</td>
</tr>
<tr>
<td>2. Term of office</td>
<td>7 years</td>
<td>4 years</td>
</tr>
<tr>
<td>3. Method of election</td>
<td>By legislature</td>
<td>By electors chosen by voters</td>
</tr>
<tr>
<td>4. Reelection</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>5. State of the Union report</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>6. Responsibility to faithfully execute the law</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>7. Appointment of officials</td>
<td>Similar</td>
<td>Similar</td>
</tr>
<tr>
<td>8. Receiving ambassadors</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>9. Power to grant reprieves and pardons</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>10. Removal by impeachment</td>
<td>Similar</td>
<td>Similar</td>
</tr>
</tbody>
</table>
Great Compromise

Combined elements from the Virginia Plan and the New Jersey Plan to create a bicameral legislature in which the Senate would have equal representation for each state, and membership in the House of Representatives would be based on population.

Three-Fifths Compromise

Delegates from southern slave-holding states wanted to count their slaves in determining population for representation, but delegates from northern states felt slaves should not be counted toward representation. This compromise provided that every five slaves would be counted as three individuals in determining a state’s population for determining the number of representatives the state would have. It did not mean that each slave was legally considered three-fifths of a person. It had nothing to do with any individual’s right to vote. The right of slaves to vote was never recognized, and even free African-Americans were denied suffrage not only in the South but almost everywhere in the North.

Commerce Compromise

Northern delegates wanted the national government to be able to impose tariffs on goods in order to protect emerging American industry from foreign competition. Southern delegates, whose economy was very dependent on foreign trade, expected that high tariffs would harm foreign trade. This compromise determined that the national government would be able to tax only imports from foreign countries but not exports.

Slave Trade Compromise

Opponents of slavery wanted to end the foreign slave trade. Delegates from southern states did not want the national government to interfere with slavery, and believed the questions related to slavery and the slave trade should be decide at the state level. This compromise left the foreign slave trade undisturbed for 20 years; Congress would then have the power to ban the importation of slaves.

Election of the President

The method of electing the president was one of the topics on which the delegates continued to debate throughout the convention. Some people supported popular election of the president, but others believed the electorate was likely to be too poorly informed to make a good choice. They considered having the Congress elect the president, but that would make the president dependent on Congress and would invalidate the separation of powers. They decided to invent the Electoral College, in which the citizens vote for electors who then vote for the president.
Handout F: James Madison and Federalism—Excerpts from *Federalist No. 39* Answer Key

1. According to Madison, the Constitution provided for a nation that is both a nation of people and a nation of states.
   - Yellow: Its foundation is federal.
   - Green: The sources of its powers are partly federal and partly national.
   - Blue: In its operation it is national.
   - Yellow: In the extent of its powers it is federal.
   - Green: In the amendment process it is both federal and national.

2. Accept reasoned answers.
Handouts H-L Answer Keys

Handout H: Emancipation in the Early Republic

Student maps should reflect the following dates and colors.

<table>
<thead>
<tr>
<th>Year of a law providing for gradual emancipation</th>
<th>State</th>
<th>Color</th>
</tr>
</thead>
<tbody>
<tr>
<td>1777</td>
<td>Republic of Vermont</td>
<td>Yellow</td>
</tr>
<tr>
<td>1780</td>
<td>Pennsylvania</td>
<td>Green</td>
</tr>
<tr>
<td>1783</td>
<td>Massachusetts (including Maine)</td>
<td>Yellow</td>
</tr>
<tr>
<td>1783</td>
<td>New Hampshire</td>
<td>Green</td>
</tr>
<tr>
<td>1784</td>
<td>Connecticut</td>
<td>Green</td>
</tr>
<tr>
<td>1784</td>
<td>Rhode Island</td>
<td>Green</td>
</tr>
<tr>
<td>1787</td>
<td>Northwest Territory</td>
<td>Yellow</td>
</tr>
<tr>
<td>1799</td>
<td>New York</td>
<td>Green</td>
</tr>
<tr>
<td>1804</td>
<td>New Jersey</td>
<td>Green</td>
</tr>
<tr>
<td>1865</td>
<td>Delaware</td>
<td>Blue</td>
</tr>
<tr>
<td>1865</td>
<td>Georgia</td>
<td>Blue</td>
</tr>
<tr>
<td>1865</td>
<td>Maryland</td>
<td>Blue</td>
</tr>
<tr>
<td>1865</td>
<td>North Carolina</td>
<td>Blue</td>
</tr>
<tr>
<td>1865</td>
<td>South Carolina</td>
<td>Blue</td>
</tr>
<tr>
<td>1865</td>
<td>Virginia</td>
<td>Blue</td>
</tr>
</tbody>
</table>
Handout I: Founders Quotes on Slavery Answer Key

Arguments against slavery

Violation of human nature; cruelty; evil commerce
Violation of liberty; justice, humanity
Slavery outlawed in Northwest Territory
Oppressive; “mere distinction of color”
Nefarious; curse of heaven; violation of sacred laws of humanity; cruelty
Master of slaves is a petty tyrant; judgment of heaven against national sin
Wrong to maintain property in men
Shameful

Arguments for slavery

Fugitive Slave Clause
Need to clear swamp land of South Carolina
Negroes are more suited to cultivation of swampy land than are whites
Africans have less intellectual power
Africans were intended to serve whites and cultivate their land.

Handout J: Readers’ Theater – Convention Debate on Slave Trade Answer Key

1. Themes may include:
   - Slave trade is evil and immoral, but so is slavery itself.
   - The slave trade, as well as slavery itself, have already been banned in some states.
   - The expectation on the part of most participants seems to be that both the slave trade and the institution of slavery will eventually come to an end.
   - Delegates from North Carolina, South Carolina, and Georgia, while indicating that they will probably outlaw the international slave trade at some point, threaten to withdraw from the Union if the general government interferes with it.

2. Accept reasoned answers.
### Handout K: Mason’s Objections to the Constitution Answer Key

<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>Natural rights</td>
<td>Changed by Amendments 1 - 10. Mason would probably approve.</td>
</tr>
<tr>
<td>2. In the House of Representatives there is only the shadow of representation;</td>
<td>Republicanism/representative government; Consent of the governed</td>
<td>Unchanged.</td>
</tr>
<tr>
<td>laws may be made by people who do not have the proper information or the confidence of the people.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Senate not elected directly by the people and not answerable to them; Senate has too much power and there is no effective check on them.</td>
<td>Republicanism/representative government; Checks and balances</td>
<td>Partially changed by 17th Amendment. Mason would approve of popular election of Senators; he might still think the Senate is too powerful.</td>
</tr>
<tr>
<td>4. National courts could destroy the state courts; rich people could use the federal courts to oppress and ruin the poor.</td>
<td>Justice; Federalism</td>
<td>Unchanged.</td>
</tr>
<tr>
<td>5. No council of advisors for the president; the president could be overly influenced by the Senate.</td>
<td>Separation of powers; Checks and balances</td>
<td>President has a Cabinet and a number of advisors, based not on formal amendment, but on custom. Mason might approve of the development of the Cabinet. However, he might be skeptical of the quality of advice the president can receive from the Cabinet.</td>
</tr>
<tr>
<td>6. The president has unlimited power to pardon for crimes, including treason.</td>
<td>Limited government</td>
<td>Unchanged.</td>
</tr>
<tr>
<td>7. All treaties are the supreme law of the land, and are created by the president with advice and consent of the Senate. The House of Representatives, the only branch directly answerable to the people, is not part of the treaty-making process.</td>
<td>Separation of powers; Checks and balances; Republicanism/representative government</td>
<td>Unchanged.</td>
</tr>
<tr>
<td>Mason's Objection</td>
<td>A. Constitutional Principle</td>
<td>B. Constitutional Reference</td>
</tr>
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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>
<td>Limited government</td>
<td>Unchanged</td>
</tr>
<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>
<td>Limited government; Natural rights</td>
<td>The necessary and proper clause, the commerce clause, and others, have been used to significantly expand the power and role of the federal government, and we have a full-time standing army. However, freedom of the press (1st Amendment) and trial by jury in civil cases (7th Amendment) have been added to the Constitution. Mason would probably still say the powers of the states and many liberties of the people are in danger.</td>
</tr>
<tr>
<td>10. States cannot levy export taxes on their own exports.</td>
<td>Federalism</td>
<td>Unchanged</td>
</tr>
<tr>
<td>11. The Constitution sets up an aristocracy; it will be 20 more years before Congress can stop the foreign slave trade.</td>
<td>Republicanism/ representative government</td>
<td>The president and Congress did act to stop the foreign slave trade in 1808. Slavery itself was banned by the 13th Amendment. Mason would approve of the elimination of the foreign slave trade. He would likely approve of the end of slavery itself. He might think the prediction of an aristocracy has been proven true 1.) because most members of Congress can be re-elected as many times as they want; and 2.) because of other concentrations of power.</td>
</tr>
</tbody>
</table>
Students evaluate two of the Alien and Sedition Acts in light of the First Amendment.

Print copies of Handout A: The First Amendment for each student. Post enlarged copies of Handout B: The Alien and Sedition Acts, gallery-style, around the room. Also print copies to distribute to students.

To provide students with background knowledge for this lesson, have students read the Early Challenges in the Constitutional Republic essay. Have students read it and discuss it as a large group. Ask questions to check their understanding.

Distribute Handout A: The First Amendment and Handout B: The Alien and Sedition Acts. Read and discuss the documents as a class, paraphrasing it section by section in the course of the reading and discussion. Assign one section to each pair or trio of students, instructing them per the directions provided on the handout. As students work to paraphrase the text, walk the room to check their work on their assigned sections.

After students have completed their work, distribute Handout C: The Acts and the First Amendment and send them on a “gallery walk” around the room. Each small group should start at the section to which they were assigned and transfer their margin notes and their notes from Handout C to the corresponding part of the enlarged copy of the text. Small groups should rotate in unison, clockwise. Beginning with the second stop, students will begin to take notes based on those left by the students who were assigned that section of the Acts. Once all groups have completed the “gallery walk,” conduct a large-group discussion based on their Handout C notes and culminating in an evaluation of the Alien and Sedition Acts in light of the First Amendment.
Distribute **Handout D: The Virginia Resolution (1798)** and **Handout E: The Kentucky Resolutions (1798)**. Students should do a close reading of the Resolutions in order to answer the Critical Thinking Questions that follow. Alternatively, use the questions as a guide for classroom discussion of the Resolutions.

Conclude the class with an Exit Slip on which students answer the question: Did the Virginia and Kentucky legislatures, in their Resolutions of 1798, have a constitutional basis for nullification of the Alien and Sedition Acts?
The ink was barely dry on the Constitution when the first challenges to its protections arose. These early challenges to the new constitutional republic often involved the meaning of the Constitution itself. What did its words actually mean, and who would get to decide?

The first test of the Constitution came in the late 1790s. As often happens, the threat of war brought claims that restrictions on civil liberties were needed. France was in the midst of a revolution that was growing more radical and bloody by the day. It was also at war with England. Support for joining this war was split along political party lines in the U.S. Many Republicans were urging that the U.S. join the war in support of the French, who had been their ally in the American War for Independence. But many others, including the Federalists, were urging neutrality. They were concerned the U.S. was not ready to fight in another war, and were disgusted at the idea of supporting violent mob-rule in France.

The Federalist-controlled Congress passed a series of laws, called the Alien and Sedition Acts, intended to quiet support for the French. The laws made it easier to deport foreign nationals, and made it a crime to publish any “false, scandalous and malicious writing” against the President or Congress, intended to “excite against them ... the hatred of the good people of the United States.” The laws would all expire in March 1801.

Though President John Adams did not ask for these measures, he did not oppose them. Believing that morality, religion, and virtue were the best foundations for a free republic, he judged them to be constitutional and signed them into law.

The laws were controversial. But were they constitutional? Some states condemned the laws as violating the First Amendment. James Madison, chief author of the Bill of Rights, wrote one of the most famous critiques of the laws, the Virginia Resolutions (1798). He wrote that the laws “ought to produce universal alarm, [for attacking] 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.”

Kentucky joined Virginia in condemning the laws, but other states judged the law constitutional. For example, New Hampshire called the law “constitutional, and, in the present critical situation of our country, highly expedient.”

Congress also did its own part to judge the constitutionality of the law. Congress issued the “Congressional Report Defending the Alien and Sedition Laws” in February of 1799. This report defended the sedition portions of the Alien and Sedition Acts as a constitutional regulation of speech and press. Since there was no right to libel, Congress said, press freedom could not include libel. Further, liberty of the press meant no prior restraints (bans on publication beforehand), and the law was not a prior restraint. Finally, the laws were “precautionary and protective measures for our security ... So eccentric are the movements of the French government that we can form no opinion of their future designs (intentions) for our country.”

Two branches of the national government, as well as individual states had now weighed in on the laws. The debates themselves opened up a larger question. Who had the right to judge whether laws were constitutional? Madison and Jefferson seemed to believe that states had an important role to play.
Madison wrote in the Virginia Resolutions 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.” In other words, state governments had a duty to insert their authority between the national government and their citizens. They could declare federal acts unconstitutional, but those declarations would have no legal effect.

Thomas Jefferson wrote an even stronger response from the state of Kentucky, asserting, “every state has a natural right in cases not within the compact...to nullify of their own authority all assumptions of power by others within their limits” Jefferson seemed to advocate that states nullify (refuse to follow) unconstitutional laws.

Despite Madison’s and Jefferson’s arguments, though, ten of the then-fourteen states condemned the idea that states were the proper judges of the constitutionality of laws.

The Supreme Court was never asked to rule on the constitutionality of the Alien and Sedition Acts. Though the election of 1800 was close, Adams’s loss was probably due in part to public reaction to the laws. The laws expired on Adams’s last day in office in 1801. Thomas Jefferson, the leader of the Republican Party, became the nation’s third president. Adams achieved his goal of keeping the US out of war, but history has condemned his decision to sign and enforce this series of laws.

There were echoes of this controversy about 20 years later, with the Nullification Crisis. The North had grown increasingly industrialized, while the South remained an agrarian society.

Congress passed a tariff (a tax on imports) that many Southerners believed benefitted the North at the expense of Southern states. Vice President John C. Calhoun called it the “Tariff of Abominations.” Congress later passed a lower tariff, but this still did not satisfy many in the South, especially the state of South Carolina.

Calhoun wrote in “Exposition” (1828):

[T]he sovereign powers delegated are divided between the General and State Governments, and ... the latter hold their portion by the same tenure as the former, it would seem impossible to deny to the States the right of deciding on the infractions of their powers, and the proper remedy to be applied for their correction. The right of judging, in such cases, is an essential attribute of sovereignty, of which the States cannot be divested without losing their sovereignty itself, and being reduced to a subordinate corporate condition.

Four years later, Calhoun resigned as Andrew Jackson’s Vice President and filled a vacant South Carolina Senate seat. That year South Carolina issued 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.” The ordinance of nullification stated that the tariff was “null, void, and no law, nor binding upon this State, its officers or citizens.”

The Ordinance also stated that South Carolina would dissolve its union to the U.S. in response to any act “authorizing the employment of a military or naval force against the State of South Carolina...or any other act on the part of the federal government, to coerce the State.” In response, President Jackson asked Congress for exactly that — permission to use force against a U.S. state. The Force Bill of 1833 essentially allowed Jackson to wage war against South
Carolina to ensure it complied with federal law. The crisis was averted — temporarily — when Henry Clay’s compromise tariff was passed the same day.

As in 1798, several states condemned the idea that states could or should nullify federal laws. Alabama, for example, called nullification “unsound in theory and dangerous in practice.” Georgia called it “mischievous,” and “rash and revolutionary.” Mississippi lawmakers chided the South Carolinians for acting with “reckless precipitancy.”

These sentiments echoed those of James Madison, who lived to observe the nullification crisis. Though some advocates of nullification believed he would have approved of their actions, Madison called the doctrine of the nullifiers a “colossal heresy.” He hoped that talk of nullification would “yield to moderate councils”. Further, he wrote that each individual state “owes fidelity to it [the compact], till released by consent, or absolved by an intolerable abuse of the power created.”

One important difference between the Alien and Sedition Acts and the Nullification Crisis, however, is that the Nullification Crisis was sectional. Southerners had begun to seriously question whether the national government was any longer representing their interests. Many had concluded it was not. Though the crisis had appeared to pass, President Jackson wrote, “the tariff was only a pretext, and disunion and Southern confederacy the real object. The next pretext will be the negro, or slavery question.”
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.
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.

Under what circumstance does this law apply?

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...

What is the president authorized to do?
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.

What are the courts authorized to do?

What could be the consequence for aliens facing accusation?
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.
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.

<table>
<thead>
<tr>
<th>Act Respecting Alien Enemies</th>
<th>Summary</th>
<th>First Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1</td>
<td></td>
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<td>Section 2</td>
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<td>Section 3</td>
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<tr>
<td>Sedition Act</td>
<td>Summary</td>
<td>First Amendment</td>
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<td>Section 1</td>
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<td>Section 2</td>
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<tr>
<td>Section 3, 4, and Closing</td>
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Do you believe these two acts were constitutional? Why or why not?
_______________________________________________________________________________________________________________
_______________________________________________________________________________________________________________
_______________________________________________________________________________________________________________
_______________________________________________________________________________________________________________
_______________________________________________________________________________________________________________
_______________________________________________________________________________________________________________
RESOLVED, That the General Assembly of Virginia, doth unequivocably 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 lessenmg 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.
Handouts B–C Answer Keys

Handout B: Alien and Sedition Acts Answer Key

Answers may include:

**Alien Act**

Circumstances: whenever war has been declared between the U.S. and a foreign nation or government, or any invasion, incursion, or threat by a foreign nation or government.

The president was authorized to direct “observation” and restraint of foreign nationals, as well as to deport them.

The courts were authorized to bring foreign nationals before the court and to order their deportation, or to restrain or imprison them.

Consequences: removal from the United States.

**Sedition Act – Section 1**

Actions listed as illegal: unlawful “combining or conspiring” (assembly) with intent to oppose government measures; impeding operation of U.S. law; intimidating government official.

Consequences for the accused: a fine of up to $5,000; imprisonment of six months – five years.

**Sedition Act – Section 2**

Actions listed as illegal: writing, speaking, publishing, or aiding in someone else’s writing, speaking or publishing, of “scandalous or malicious writings” against the U.S. government; inciting unlawful opposition or resistance to U.S. laws; aiding or abetting hostile plans of foreign nations against the U.S.

Consequences for the accused: a fine of up to $2,000 and up to two years in prison.

**Sedition Act – Sections, 3, 4, and Closing**

How long in effect: until March 3, 1801 – or about 2 years and 7 months from the time the Resolution was approved in 1798.
### Handout C: The Acts and the First Amendment Answer Key

<table>
<thead>
<tr>
<th>Act Respecting Alien Enemies</th>
<th>Summary</th>
<th>First Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 1</strong></td>
<td>Summary – <em>Sample response</em>: When the U.S. is at war or under attack by a foreign government, male foreign nationals aged 14 or older will be stopped, arrested, and removed from the U.S. as enemies. The president is authorized to order “observation” and restraint of foreign nationals, as well as to deport them.</td>
<td>First Amendment – Students may not find a direct First Amendment relevance, but may raise discussion about other amendments in the Bill of Rights.</td>
</tr>
<tr>
<td><strong>Section 2</strong></td>
<td>Summary – Illegal actions include unlawful assembly with intent to oppose government measures; impeding operation of U.S. law; intimidating government official. Consequences for the accused include a fine of up to $5,000 and possible imprisonment from six months to five years.</td>
<td>First Amendment – Students may refer to “the right of the people peaceably to assemble.”</td>
</tr>
<tr>
<td><strong>Section 3</strong></td>
<td>Summary – Government officials or judges may deport foreign nationals from the U.S.</td>
<td>First Amendment – Students may refer to redress of grievances.</td>
</tr>
<tr>
<td>Sedition Act</td>
<td>First Amendment</td>
<td></td>
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<tr>
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<td></td>
</tr>
<tr>
<td><strong>Section 1</strong></td>
<td><strong>Summary</strong> – It is illegal to assemble with intent to oppose government measures, to impede operation of U.S. law, or to intimidate a government official. Accused can be fined up to $5,000 and be imprisoned for six months to five years.</td>
<td><strong>First Amendment</strong> – Students may refer to the right to peaceably assemble.</td>
</tr>
<tr>
<td><strong>Section 2</strong></td>
<td><strong>Summary</strong> – It is illegal to write, speak, publish, or support another person’s writing, speaking or publishing, against the U.S. government; to incite unlawful opposition to U.S. laws; and to aid or abet hostile plans of foreign nationals against the U.S. Accused can be fined up to $2,000 and face up to two years in prison.</td>
<td><strong>First Amendment</strong> – Students may refer to freedom of speech and of the press.</td>
</tr>
<tr>
<td><strong>Section 3, 4, and Closing</strong></td>
<td><strong>Summary</strong> – Accused may give evidence in his defense. The law would be in effect until March 3, 1801 (about 2 ½ years from the time the resolution was approved in 1798).</td>
<td><strong>First Amendment</strong> – Students may not find a direct connection to the First Amendment. Some may find the ability to give evidence as a form of free speech. Some students may find other relevant amendments in the Bill of Rights.</td>
</tr>
</tbody>
</table>

*Do you believe these two acts were constitutional? Why or why not?*

Accept answers that are based on a reasonable level of understanding of the Constitution.
Handouts D–E Answer Keys

Handout D: Virginia Resolutions (1798)

1. The Virginia Resolutions open with a unifying statement at the same time that they are declaring an equal loyalty not only to the United States but to Virginia.

2. In echoing the wording of the Declaration of Independence, the Virginia Resolutions are referring to inalienable rights and to the responsibility for citizens to ensure that the national government behaves constitutionally.

3. Accept reasoned answers.

4. According to these resolutions, states have a right and duty to intervene when it is necessary to maintain limits on federal power in relation to that of the states.

5. The writer is concerned about the growing power of the federal government.

6. The Resolutions concludes that the Alien and Sedition Acts are null and void. As this is a resolution of the Virginia Senate, it is Virginia declaring the Alien and Sedition Acts unconstitutional.

Handout E: Kentucky Resolutions (1798)

1. Accept reasoned answers that are based on the text.

2. The Tenth Amendment is referenced because it asserts the principle of federalism, and that states retain powers not granted to the national government. This is the basis for the Kentucky Resolutions’ statement of nullification in regard to the Alien and Sedition Acts.

3. The Act is declared void based on the Tenth Amendment to the U.S. Constitution and with reference to the First Amendment.

4. Nullification is appropriate when powers are assumed which have not been delegated.

5. Nullification is the theory that a state has the legitimate power to nullify, or invalidate, any federal law that the state’s legislature has decided violates the Constitution. It is based on the “Compact Theory,” which holds that since the Union was formed by an agreement of the states, the states, not the federal courts, are the proper interpreters of the extent of the federal government’s power and authority.
On one side of the room, post a sign that says, “Founders.” On the other side of the room, post a “Progressives” sign. Assign students to groups of 3-4. Give each group a random selection of four to six cards taken from the Handout A: Founders vs. Progressives Quote Cards. In their groups, students should read then paraphrase each quotation in their set. Then, they should discuss the ideas expressed in them. To guide discussion, refer to the following questions:

- What assumptions does the author of this quotation make about human nature?
- How does this quotation seem to define the purpose of government?
- How does this quotation characterize the proper relationship between the citizen and government?

Next, read aloud one of the quotations from Handout A. Students whose group had that quotation in their stack should stand closest to the sign that they believe correctly describes the author of that quotation. Once they have “taken their stand,” provide the correct answer. Repeat the process with the remaining quotations. If students go to different walls/signs, initiate a discussion about why each came to his or her own conclusion.

Once all quotations have been read, debrief by conducting a large-group discussion of the Founders’ vs. Progressives’ points of view. Use the questions listed above to guide the discussion.

Post the following two statements. Lead a brief discussion about which idea is more accurate, then have students select one they most support. Assign a one-paragraph response paragraph in which students support their chosen statement.

“People are naturally flawed. They can make bad decisions for themselves and even worse ones for other people. That’s why we need checks and balances and strict limits on government power.”

“People are naturally good, and can and should be made better through government action.”
**Critical Question:** What assumptions did the Founders and the Progressives make about human nature? What did each believe to be the purpose of government?

Distribute **Handout B: Founders vs. Progressives – Amendment Analysis.** Students should do a close reading of the amendments in order to answer the related Critical Thinking Questions individually and in writing. After students have written their responses to the questions for both sets of amendments, lead a class discussion of those questions.

In addition to the questions provided on **Handout B,** ask the following:

- What assumptions did the authors of these amendments make about human nature?
- How do these amendments characterize the proper relationship between the citizen and government?
The Civil War, by increasing the power of the federal government, helped pave the way for a later shift in the role of the national government. People expected it to do more, and gave it more power so it could try. The defeat of the South, Reconstruction, and the Supreme Court’s interpretation of the Fourteenth Amendment gave the national government growing power over the states and the people. The great and long-overdue liberating qualities of the Thirteenth, Fourteenth, and Fifteenth Amendments came, ironically, at a price to liberty: the government would need much greater power if it was going to attempt to enforce equality.

Also important to the constitutional history of the United States during this time were developments on the world stage. The ideas of German philosophers Karl Marx and Friedrich Engels captured the attention of intellectuals and many others concerned with the conditions of the poor in industrialized nations. In the *Communist Manifesto* (1848) Marx and Engels wrote “the history of all hitherto existing society is the history of class struggles.” They argued that capitalism should be replaced by socialism — a term that broadly refers to government ownership of industries and collective, rather than private, ownership of property. Eventually, Marx and Engels envisioned a classless society giving “to each according to his need,” and taking “from each according to his ability.” There would no longer be any need for money, or even for government itself. Both would disappear, they theorized, after a transitional period when the workers ruled.

Socialism appealed to some in the U.S. The Socialist Labor Party was founded in 1877, with goals of a classless society and collective ownership of industry and social services. Woodrow Wilson, while not claiming the label “Socialist,” determined that democracy and socialism were not all that different. Writing as a leading American intellectual in 1887, he wrote:

> 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.”

The idea that government “the community” has “an absolute right to determine its own destiny and that of its members” is a progressive one. The difference between the Founders’ and progressive’s visions can be summarized this way: The Founders believed citizens could best pursue happiness if government was limited to protecting the life, liberty, and property of individuals. They believed people were naturally flawed, and structured government so that people’s inherent self-interest would lead officials to check one another’s attempts to exercise more power than the Constitution allows. Unlike the Framers of the Constitution, progressives believed that the ultimate aim of government should be promoting the development of all human faculties. Because “communities” have rights, those rights are more important than the personal liberty of any one individual in that community. Therefore, they believed, government should provide citizens with the environment and the means to improve themselves through government-sponsored programs and policies as well as economic redistribution.

The twentieth century saw continued unrest over the conditions of workers. Peasant uprisings against landowners were increasing in Europe. In the U.S., some organized labor demonstrations
became violent. When more than 100,000 workers protested pay cuts in the 1894 Pullman strike, disrupting all rail service west of Detroit, President Cleveland eventually used the U.S. Army to break the protests. Many believed socialism promised the relief they sought. The Socialist Party of America was formed in 1901. International Workers of the World, a union that called for the end of capitalism and wage labor, formed in 1905. Industrial tragedies like the Triangle Shirtwaist Factory Fire of 1911, in which more than 100 workers died, fanned the flames of those demanding reforms. The drama reached a pitch in Europe in 1917 in Russia, when the Bolshevik Revolution executed the Russian monarchy and established Soviet Russia. Some feared the rule of law would collapse in the U.S.

Some saw the integration of some socialist party goals into the Democratic Party platform as a compromise. While the Socialist Party never captured the presidency in the U.S., Socialist candidate Eugene V. Debs received almost 6% of the popular vote in 1912. Socialist ideas were clearly part of the national conversation, and found their way into Progressive reforms of the period. Progressivism was not Marxism, but the two schools did agree that the community and its purposes should come before the individual and his preferences. These progressive reforms included the Sixteenth to Nineteenth Amendments.

Wilson, who served as president from 1913-1919, advocated what we today call the living Constitution, or the idea that its interpretation should adapt to the times. “[A]ll that progressives ask or desire,” Wilson said, “is permission... to interpret the Constitution according to the Darwinian principle.” He oversaw the implementation of progressive policies such as the introduction of the income tax and the creation of the Federal Reserve System to attempt to manage the economy.

The Sixteenth Amendment authorized the national government to tax incomes. It was ratified in 1913, and Congress passed the Revenue Act of 1913 that same year. With a progressive income tax (where those who earn more money pay more), the national government could use the additional tax dollars gained to implement additional government services and programs.

The Seventeenth Amendment, providing for the election of senators by the people of each state, was approved that same year. This amendment provided for the direct election of U.S. Senators. This change to the Constitution was a challenge to the principle of federalism. The Founders had carefully structured the two houses of Congress and given them different powers based on those differences. For example, representatives were elected by the people of each state for 2-year terms, and had the “power of the purse.” Senators were selected by their state legislatures, had 6 year terms, and had the duties of ratifying treaties, trying impeachments, and approving executive appointments. The design of Congress was meant to strike a balance between democracy and republicanism - allowing the people to govern themselves while still protecting individual rights and the powers of states. The Senate was, to put it another way, a “check” against democracy and the tyranny of the majority. The Seventeenth Amendment undid this “check and balance.”

Prohibition was another progressive reform in keeping with the idea that government should help man improve himself. While the Temperance movement began as an attempt to persuade individuals to abstain from drinking, it later shifted to a campaign to use the force of law to ban the manufacture and sale of
alcohol. The Eighteenth Amendment banned the manufacture, sale, or transport of intoxicating beverages and the Volstead Act codified it in U.S. law. A massive failure in every way, Prohibition was repealed with the Twenty-First Amendment in 1933.

The last of the progressive amendments to the Constitution, the Nineteenth Amendment barred states from denying female citizens the right to vote in federal elections. This amendment extended the right to vote to half the population which had, in most states, been denied the right to cast votes for their representatives.

Interestingly, some woman’s suffragists campaigned for the extension of the franchise to women not on women’s equality, but on women’s claimed superior moral character, which was needed to guide the U.S. down the right paths.

The Progressive Era represented a dramatic shift when it came to many peoples’ understanding of democracy, the purpose of government, and the role it should play in our lives. It also set the stage for the New Deal and from a definition of “rights” that was also very different from the Founders’ conception of rights.
### Handout A: Founders vs. Progressives Quote Cards

1. “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.”

2. “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.”

3. “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?”

4. “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.”
<table>
<thead>
<tr>
<th>Page</th>
<th>Text</th>
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<tr>
<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>
</tr>
<tr>
<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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<tr>
<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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<tr>
<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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<tr>
<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>
</tr>
<tr>
<td>11</td>
<td>“Our country has deliberately undertaken a great social and economic experiment, noble in motive and far-reaching in purpose.”</td>
</tr>
<tr>
<td>10</td>
<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>
</tr>
<tr>
<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>
</tr>
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</table>
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

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 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.

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.

Progressives’ Amendments

16th 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.

17th 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
Handout B: Page 2

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.

18th Amendment - Excerpt

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.

19th Amendment - Excerpt

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.

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?

6. 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?
Handout A: Founders vs. Progressives Quote Cards

Answer Key

1. Founder – The Declaration of Independence, 1776
5. Founder - Patrick Henry, “Speech to the Second Virginia Convention,” 1775
Handout B Answer Key

1. *Founders:* In order to protect citizens’ inalienable rights, government power must be limited. The purpose of government is to se amendments restrain its own power in relation to citizens’ rights.

   *Progressives:* In attempting to empower the people, government power must grow. The purpose of government is to improve the social order by providing citizens with the environment and the means to improve themselves through government programs and policies.

2. *Founders:* Government exists to preserve citizens’ ability to pursue life, liberty, and property and derives its power from the consent of the governed. Power and responsibility rest more heavily with the citizens. States retain rights not expressly given to the national government.

   *Progressives:* Government exists to provide the right environment for citizens to improve themselves. Power and responsibility rest more heavily with the enlightened rulers. The national government can limit states’ powers.

3. Answers should explain the Founders’ and Progressives’ understanding of the role of government and the balance of power between the people and government.

4. The Founders’ Amendments sought to limit and broadly define government power. The Progressives’ Amendments sought to increase and specifically define government power.

5. Answers will vary. Students should discuss the role of government and the relationship between the people and government.

6. The Founders believed that power and responsibility should rest more heavily with the people or the states while the Progressives believed that power and responsibility should rest with the national government.
Prior to reading “Rights and the New Deal” essay, have students read **Handout A: The Bill of Rights** and **Handout B: Excerpts from the State of the Union Address by Franklin Delano Roosevelt (1944)**. Have students complete **Handout C: Negative and Positive Rights**, write examples of each type of right, and answer the questions individually or in pairs. Then have the students read the essay “Rights and the New Deal” in Unit 3. After they have finished reading, hold a large group discussion about the differences between positive and negative rights and whether or not they agree with Roosevelt’s assertion that political (or negative) rights were no longer adequate to protect Americans. Ask students whether or not they agree with Roosevelt’s assertion that negative rights, which protect people from harm, were no longer adequate for Americans. If not, ask them to consider what happens when one person’s claim of a positive right to be given something conflicts with another person’s negative rights not to have things taken against his or her will.
The last year of the 1920s ushered in the Great Depression. The stock market crashed in 1929. Business failures, home foreclosures, bank closures, and spiraling unemployment rippled across the nation.

Historians and economists debate the causes of the Great Depression. Some blame inadequate demand and decreased capital investment by companies; others blame the recently-created Federal Reserve's monetary policies that led to “easy credit” and unsustainable prices. Historians and economists also debate whether the national government's responses helped end the Great Depression, or whether they made it worse.

Herbert Hoover was president when the stock market crashed in 1929. While history books sometimes portray Hoover as an advocate of laissez-faire policies, his administration actually took numerous bold steps to intervene in the economy. He encouraged businessmen not to cut production or lay off workers. He asked farmers to voluntarily cooperate to raise prices, while also increasing federal farm subsidies. He called for an international moratorium on debts. He asked Congress to increase spending on public works projects and to increase funding for banks to prevent mortgage foreclosures. He also oversaw the creation of the Reconstruction Finance Corporation. He repealed existing tax cuts and increased top tax rates from 25% to over 60%.

But these efforts by the federal government did not stem the economic disaster. One out of every four people was out of work. Homeless people lived in shanty-towns called "Hoovervilles" in many cities, and the Gross National Product had fallen from a high of over $100 billion in 1929 to $55 billion.

Challenging Hoover in the Presidential campaign of 1932 was the Democratic nominee, Franklin Delano Roosevelt (FDR). He projected a positive, energetic image, promising the American people a “new deal.” Roosevelt easily won the election in November of 1932 with almost sixty percent of the popular vote. In his First Inaugural Address, he encouraged the American people to find hope in their history of overcoming obstacles. He stated that “the only thing we have to fear is fear itself...” Roosevelt praised the Constitution's balance between executive and legislative authority. But he stated that if Congress failed to act, he would ask for the power to deal with our domestic problems unilaterally: “I shall not evade the clear course of duty that will then confront me. I shall ask the Congress for the one remaining instrument to meet the crisis—broad Executive power to wage a war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe.” FDR, like his predecessor Wilson, believed that the “living Constitution” should adapt and change with the times.

In the first hundred days of the new administration, Congress quickly approved a wide variety of programs called the First New Deal. The National Industrial Recovery Act, along with the Agricultural Adjustment Act, were considered the “pillars” of the first hundred days. All significantly increased the size, reach, and administrative character of the federal government. After the 1934 election, Roosevelt worked to extend New Deal reforms through measures designed to provide more benefits to some at public expense. Extensive public works projects, the Social Security Act, increased income taxes on the wealthy, and several programs intended to help farmers, laborers, and the unemployed made up the Second New Deal.
At first, the Supreme Court struck down many of these new laws as outside the constitutional powers of Congress. In 1937, Roosevelt proposed the Judicial Procedures Reform Bill of 1937. This law would have allowed the President to appoint a new justice to the Supreme Court for every sitting justice over the age of 70. This would have allowed the president to appoint up to six new members of the high court. Speaking to the American people in one of his Fireside Chats, Roosevelt warned that a failure to pass sweeping laws would leave everyone vulnerable to economic ruin. “National laws are needed to complete [our recovery] program. Individual or local or state effort alone cannot protect us in 1937 any better than ten years ago.” The bill was introduced in the Senate, which ultimately passed a version of the bill which did not authorize the President to appoint new members of the Court. Suddenly, one Justice switched sides and began voting to uphold New Deal programs. Historians debate whether the “switch in time that saved nine” was the result of a true change of mind, or a response to political pressure.

Delivering his 1944 state of the union address during his third term as president, Roosevelt said, “People who are hungry and out of a job are the stuff of which dictatorships are made.” The rights protected by our Founding documents, he said, had “proved inadequate to assure us equality in the pursuit of happiness.” He said the American people had accepted a “second Bill of Rights” as a basis of security and prosperity. These new rights would be what was necessary, Roosevelt believed, to carry what be considered the higher aim of the State into effect.

*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 [WWII] is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being....”

The “rights” in Roosevelt’s list differ substantially from the rights in the U.S. Bill of Rights. The natural and inalienable rights in the U.S. Bill of Rights are mostly “negative” in nature. This means that they ensure the individual’s natural freedom to act [e.g. worship, speak, and publish freely, defend oneself, remain silent, acquire property, etc.] while not requiring anyone to act on behalf of another. The new “rights” FDR proposed, however, were “positive” in nature, such as the “right” to a well-paying job, a “decent home,” or a “good education.” Rather than protecting the individual’s natural freedom, FDR’s list of rights was a set of things people were owed — entitlements and services the government would, in theory, provide to certain individuals at the expense of certain
others. In other words, the assurance of the “new” rights would come at the expense of the “old.” They would authorize the government to limit liberty.

Many people believe that human dignity requires the conditions FDR described in his Bill of Rights, and that we all have the responsibility to love our neighbors and care for each other with charity. But this is not what the “Second Bill of Rights” claimed. FDR was advocating, rather, that these duties should go from being individual responsibilities to government-guaranteed rights. It would no longer be your family’s responsibility to ensure you had a decent home and good education, for example, but the government’s. And since the government has no source of revenue other than taxes, these positive “rights” would have to be paid for by others.

The president is not a legislator; the most he can do while acting within the limits of the Constitution is “recommend measures” or propose laws to the lawmaking body: Congress. The rights in Roosevelt’s “second bill of rights” were not taken up as constitutional amendments, but Congress attempted to secure many of them legislatively. In fact, some of those attempts were underway before the “second bill of rights” speech was given in 1944.

Roosevelt went on to be elected to a fourth term in 1944, after his already-unprecedented third one. He died in office in 1945. The Twenty-Second Amendment was ratified in 1947, limiting the number of times someone can be elected president to two.

Roosevelt had observed in 1937, “Among men of good will, science and democracy together offer an ever-richer life and ever-larger satisfaction to the individual. With this change in our moral climate and our rediscovered ability to improve our economic order, we have set our feet upon the road of enduring progress.” Once the nation had finished fighting World War II, this progressive vision of government as existing in part to provide people with the tools for an ever-enriching life would be taken up again.
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.

* 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.
Handout C: Negative and Positive Rights Answer Key

**Examples of Negative Rights:** right to free speech; right to free press; right to free exercise of religion; right to peaceably assemble; right to petition the government; right to due process of law; etc.

**Examples of Positive Rights:** right to a job; right to make a decent living; right to education; right to adequate food and clothing; right to adequate medical care; etc.

1. The Bill of Rights lists negative rights. They are rights that ensure the individual’s natural freedom to act while not requiring anyone to act on behalf of another. 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.

2. The “Second Bill of Rights” lists positive rights. They are rights which require others to perform a duty or act in a certain way.

3. Accept reasoned answers. In a follow-up discussion, address what the Founders meant by “pursuit of happiness” and its relevance in this context.