PRESIDENTS & THE CONSTITUTION

A program of the Bill of Rights Institute
200 North Glebe Road, Suite 200
Arlington, Virginia 22203
www.BillofRightsInstitute.org

Founded in September 1999, the Bill of Rights Institute seeks to educate young people about the words and ideas of America's Founders, the liberties guaranteed in our Founding documents, and how our Founding principles continue to affect and shape a free society. The Bill of Rights Institute is an educational non-profit organization, classified by the Internal Revenue Service as a 501(c)(3) organization, a public charity. With an annual operating budget of over $4 million, the Institute is grateful to be supported by 3,000 individual, corporate, and foundation donors.
# Table of Contents

The Bill of Rights Institute Councils ................................................................. ii
Acknowledgements ......................................................................................... iii
Preface ........................................................................................................... iv
Teaching Suggestions .................................................................................... v
Introductory Essay: “The Creation of the American Presidency” by David Marion, Ph.D. ...... vi

## Unit One  Powers Herein Granted: The President and Federal Power
Constitutional Connection: The Presidency and Federal Power ..................... 2
“The Presidency and Federal Power” by David Marion, Ph.D. ....................... 4
  * James Madison and the Bonus Bill ......................................................... 8
  * Theodore Roosevelt and the Bully Pulpit ............................................ 18
  * Lyndon Johnson and Ronald Reagan: Two Views of Federal Power .... 24

## Unit Two  Commander in Chief: War and the Constitution
Constitutional Connection: War and the Constitution .................................... 34
“War and Civil Liberty” by Robert M. S. McDonald, Ph.D. ......................... 36
  * John Adams and the Alien and Sedition Acts ....................................... 40
  * Abraham Lincoln and Habeas Corpus ................................................ 48
  * Woodrow Wilson and the Espionage Act .......................................... 56

## Unit Three  All Other Persons: Slavery and the Constitution
Constitutional Connection: Slavery and the Constitution ........................... 66
“Slavery, the Constitution, and the Presidency” by Stuart Leibiger, Ph.D. ....... 68
  * James Buchanan and the Dred Scott Decision .................................... 72
  * Abraham Lincoln and the Emancipation Proclamation ....................... 80
  * Andrew Johnson and the Civil War Amendments ............................. 86

## Unit Four  Advice and Consent: The President as Chief Diplomat
Constitutional Connection: The President as Chief Diplomat ..................... 92
“The President as Chief Diplomat” by Gleaves Whitney ............................... 94
  * George Washington and Jay’s Treaty ............................................... 98
  * Woodrow Wilson and the Treaty of Versailles ................................. 106
  * Jimmy Carter and the Panama Canal Treaty .................................... 114

## Unit Five  The Electors Shall Meet: Electing the President
Constitutional Connection: Electing the President ...................................... 118
“Selecting the President” by Marc Landy, Ph.D. ...................................... 120
  * John Quincy Adams and the Election of 1824 .................................. 124
  * Rutherford B. Hayes and the Disputed Election of 1876 .................... 132

Answer Key .................................................................................................. 156
Appendix A: The Declaration of Independence ........................................ 165
Appendix B: The Constitution of the United States .................................... 168
Appendix C: The Bill of Rights ................................................................. 178
National Standards Correlations .............................................................. 179
Special Thanks and Image Credits ......................................................... 180
Academic Advisory Council

William Damon, Ph.D.  
Stanford University

Richard Epstein  
University of Chicago  
Law School

William Galston, Ph.D.  
Brookings Institution

Stephen Bullick  
Mount Lebanon  
High School  
Pittsburgh, PA

David S. Butts  
Cobb County School District  
Marietta, GA

A. E. Dick Howard  
University of Virginia  
School of Law

Bruce Damasio  
National Council for the Social Studies

Alex M. Johnson, Jr.  
University of Minnesota  
Law School

Charles R. Kesler, Ph.D.  
Claremont McKenna College

Sanford V. Levinson  
University of Texas  
School of Law

Stephen Macedo, Ph.D.  
Princeton University

Pauline Maier, Ph.D.  
Massachusetts Institute of Technology

John Majewski, Ph.D.  
University of California,  
Santa Barbara

David Marion, Ph.D.  
Hampden Sydney College

Rodney Smolla  
Washington and Lee School of Law

Eugene Volokh  
University of California,  
Los Angeles, School of Law

Keith Whittington, Ph.D.  
Princeton University

Gordon Wood, Ph.D.  
Brown University

Todd Zywicki  
Bill of Rights Institute  
Academic Advisor  
George Mason University  
School of Law

Program Advisory Council

Stephen Bullick  
Mount Lebanon  
High School  
Pittsburgh, PA

David S. Butts  
Cobb County School District  
Marietta, GA

A. E. Dick Howard  
University of Virginia  
School of Law

Alex M. Johnson, Jr.  
University of Minnesota  
Law School

Charles R. Kesler, Ph.D.  
Claremont McKenna College

Sanford V. Levinson  
University of Texas  
School of Law

Stephen Macedo, Ph.D.  
Princeton University

Pauline Maier, Ph.D.  
Massachusetts Institute of Technology

John Majewski, Ph.D.  
University of California,  
Santa Barbara

David Marion, Ph.D.  
Hampden Sydney College

Rodney Smolla  
Washington and Lee School of Law

Roderick Graham  
ITT Educational Services, Inc.

Chuck Hyman  
Anti-Defamation League

Robert S. Leming  
Center for Civic Education

Bruce Lesh  
Franklin High School  
Reisterstown, MD

Jan Miller  
State Bar of Texas

Tim O’Brien  
Nova Southeastern University  
Law School

Elaine Reed  
National Council for History Education (retired)

Alice Reilly  
Fairfax County  
Public Schools  
Annandale, VA

Sara Shoob  
Fairfax County Public Schools (retired)  
Annandale, VA

Dr. Patty Smith  
Midland ISD Curriculum Supervisor (retired)  
Midland, TX

Amy Trenkle  
Stuart Hobson Middle School  
Washington, DC

Admiral Paul Yost  
James Madison Memorial Fellowship Foundation

Regina L. Zacker  
New York City Department of Education (retired)
Acknowledgements

The National Endowment for the Humanities made *Presidents and the Constitution* a reality by providing a generous grant through its *We the People* program.

*Any views, findings, conclusions, or recommendations expressed in this publication do not necessarily reflect those of the National Endowment for the Humanities.*

The Bill of Rights Institute would also like to thank Dr. John M. Templeton, Jr. for his generous support of this project.
At the Constitutional Convention, Edmund Randolph raised concerns about the executive branch as the “fetus of monarchy.” A year later, Alexander Hamilton asserted in *Federalist* #70 that “Energy in the executive is a leading character of the definition of good government.” This debate about the constitutional duties and responsibilities of the President of the United States began at the Founding and continues today. *Presidents and the Constitution* will help you engage your students in this debate by analyzing the actions of Presidents in light of the Constitution.

Volume I features fifteen lessons organized according to five constitutional themes: “The President and Federal Power,” “War and the Constitution,” “Slavery and the Constitution,” “The President as Chief Diplomat,” and “ELECTING THE PRESIDENT.” Volume II will feature three new themes as well as second units on “War and Federal Power.”

Each unit begins with a scholarly essay, discussing the constitutional theme and placing the issues in their historical context. Following the essay is a primary source analysis—a “Constitutional Connection”—to serve as an introductory activity for the lessons in the unit. Three individual lessons on three Presidents round out each unit.

The lessons in *Presidents and the Constitution* can be approached and presented individually, historically, or thematically. Each lesson includes a historical narrative about the featured President focusing on the constitutional issues during his tenure in office. Modular lesson plans include warm-up activities, primary source analyses, simulations, guided controversies, role-plays, and other hands-on activities.

The *Presidents and the Constitution* curriculum Web component contains varied resources to supplement this printed book. Visit [www.ArticleII.org](http://www.ArticleII.org) for additional features including five four- to six-minute documentary-style films. Each thematic movie can be used to introduce, supplement or wrap-up a single lesson or entire unit. These Flash movies can be viewed on the Web or downloaded for screening in the classroom.

When you share *Presidents and the Constitution* with your students, they will explore how specific constitutional principles have applied in numerous situations in history. While some may consider several of the constitutional questions raised in this curriculum to have been “answered” by history, we believe it is important to give students the opportunity to analyze history for themselves. One thing is certain: our nation’s chief executive—by exercising the powers delegated to him in the Constitution or those powers which he has assumed with acquiescence of the other branches of government and of the people—may affect the life of every citizen. It is our hope that the resources in *Presidents and the Constitution* will help your students understand the powers delegated to the President in the Constitution, and with this knowledge, to be more informed citizens and critical students of history and current events.
Teaching Suggestions

Activities to reinforce concepts across lessons or units

- Divide the class into groups of three or four and assign each student the identity of a different president within a unit. In a “Meeting of the Minds” activity, have the “Presidents” share their opinions on their own and the others’ time in office and the constitutional challenges they faced. After ten or fifteen minutes, invite groups to present in a “fishbowl” for the rest of the class to observe.

- Compile various presidential quotations and invite students, two at a time, to play “Name that President” in a style similar to “Name that Tune.” Which student can identify the President speaking in the fewest number of words? Invite students to challenge each other: “I can name that President in 6 words…”

- Assign each student the identity of a President, and have them create a living timeline by lining up in chronological order. Then have them brainstorm other “themes” that might have been in the book (Northern/Southern; leadership style; etc.) and arrange themselves into new groups based on these themes.

- Assign students a President about whom to write one or two questions. Use these student questions to play “Presidential Jeopardy.”

- Play “American Idol: Presidents.” Assign three students to play the roles of the Presidents in a unit. Have them discuss their accomplishments and convince the class to vote for them as the Presidential Idol.

- Have students select a President and design a “Presidential Seal” for the particular person. Seals could be drawn by hand or generated on the computer, and should include images, symbols, words, and colors to represent the particular President and the constitutional challenges he faced. Students should be prepared to discuss why they selected the graphics they did.

- Using poster board or butcher paper, create a “simulated Wiki” in the classroom. Place four or five papers around the classroom, and write one sentence about one President (leaving adequate room between words) on each paper. Have students circulate through the room adding (or deleting) information. When the Wikis are complete, debrief students on the process.

- Select a particular President and a specific constitutional challenge, and have students compose five to ten “status updates” or “tweets” that the President may have posted as it was taking place.

- Have students complete the Constitutional Connection activity for a unit. Then present the Issues Endure activity for that unit. After students have completed both, conduct a large group discussion to answer the questions: How has this constitutional issue persisted through our history?

Using the www.ArticleII.org Web component

- Have students watch the thematic movie for a unit. Conduct a large group discussion to identify the most provocative issue that emerged, and to assess the constitutionality of the Presidents’ actions.

- Have students explore the interactive version of Article II.

- Have students learn more about the Presidents in the “Did You Know” section of the Web site.

- Have students use resources on the Web site to create their own PowerPoint presentations about what they learned.

Share your feedback on this curriculum at www.ArticleII.org/Survey
THE PRESIDENT AND FEDERAL POWER

ACTIVITY  [ 20 minutes ]

A. Distribute Constitutional Connection: The President and Federal Power on the following page and Appendix B: The United States Constitution.

B. Divide the class into pairs or trios and assign one section of the Constitution (in the first column of the chart) to each group. Have students become “experts” on their section of the Constitution, and then jigsaw into new groups with one member representing each section.

Reconvene the class and use an overhead to guide discussion and fill in the chart. See the Answer Key for suggested responses. Students may mention additional powers and responsibilities of the President, including his powers as Commander in Chief and to negotiate treaties. For activities on these presidential powers, see units two and four.

C. Conduct a large group discussion to answer the questions:

- Does the President have any lawmaking power? If so, how much?

- The President is charged with executing (or carrying out) the laws. Why do you think the Founders gave this power to a separate branch of government rather than the branch that makes laws?

- At the Constitutional Convention, some delegates worried that the President would become too much like a king. A single executive, one worried, was the "fetus of monarchy." In describing the executive power, did the Founders do a good job of preventing that possibility?

## The President and Federal Power

*Directions: Read all of Article II. Then look carefully at the sections which include the phrases below. Define each phrase and explain how it defines the executive power.*

<table>
<thead>
<tr>
<th>Constitution Citation</th>
<th>Put this power in your own words</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Article I, Section 7&lt;br&gt;...[I]f he approve he shall sign [a bill], but if not he shall return it...</td>
<td></td>
</tr>
<tr>
<td>2. Article II, Section 1&lt;br&gt;The executive power shall be vested in a President of the United States of America....</td>
<td></td>
</tr>
<tr>
<td>3. Article II, Section 1&lt;br&gt;He shall take the following oath or affirmation:—“I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.”</td>
<td></td>
</tr>
<tr>
<td>4. Article II, Section 3&lt;br&gt;He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient...</td>
<td></td>
</tr>
<tr>
<td>5. Article II, Section 3&lt;br&gt;[H]e shall take care that the laws be faithfully executed...</td>
<td></td>
</tr>
<tr>
<td>6. Article II, Section 4&lt;br&gt;The President...shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.</td>
<td></td>
</tr>
</tbody>
</table>
James Madison and Alexander Hamilton, among other leading Founders, recognized by the early 1780s that the government created by the Articles of Confederation suffered from both organizational and empowerment deficiencies. The Confederation government had neither the power nor the institutions that it needed to carry out important national tasks. Hamilton was an early advocate for an independent executive and Madison recognized that the central government had to be equal to the job of creating and maintaining a national commercial republic. What emerged from the Constitutional Convention of 1787 was a plan for a “compound” republic that was “partly national, and partly federal,” to paraphrase Madison. The new national government was to have “national powers,” and thus national means, equal to “national ends.” One of the new institutions was an independent executive with control over national administrative affairs.

For their part, the states retained important powers to address tasks that did not require national direction or management.

If the scope of the powers of the new national government had been enlarged, it was understood by Madison and other Framers that they were still limited. It did not take long, however, for the outer boundaries of those powers, including the powers of the independent executive, to become a source of considerable controversy. Hamilton’s call for the creation of a Bank of the United States, along with his defense of national assumption of war debts, provoked strong reactions from Americans who advocated a strict construction of national powers and responsibilities. Significantly, Madison joined Jefferson in complaining that Hamilton and the Federalists intended to “administer the country into a monarchy” by giving a broad or “loose” construction to the powers of the central government and the executive department.

While Madison never regretted his support for a national rather than confederal system of government, he labored over several decades to preserve what he considered to be the proper balance between the national government and the states on the one hand, and the legislative and executive powers of the central government on the other (“Madison’s Middle”). He believed that the consolidation of power in the central government as a whole or in the executive branch would not be good for liberty or competent government. It is noteworthy that Madison’s last significant action as president was his veto of the so-called Bonus Bill that included a fairly comprehensive plan for
internal improvements such as roads and canals. Although he understood the benefits that would be derived from these improvements, and had even discussed the importance of internal improvements in his second inaugural address, Madison believed that the powers contained in the bill were not among the enumerated powers of Congress as set out in the Constitution. For Congress to assume these powers on its own would represent a dangerous challenge to the constitutional system. The people, in their capacity as the sovereign body, had been entrusted by the Framers with the power to revise the Constitution through the addition of amendments, argued Madison.

The debate over the scope of the powers entrusted to the national government by the people did not come to an end with the passing of the last of the Framers, or with the victory of the Union Army in the Civil War. Argument for and against a broad interpretation of enumerated powers, and over the existence of implied powers, have become permanent features of the American landscape. The role and powers of the federal government and the presidency in Madison’s republic, however, have evolved. The legitimacy of some degree of national involvement in the everyday affairs of the people has been conceded, if sometimes grudgingly, since the mid-Twentieth Century. Along with a more activist national government, most Americans consider the executive department to be principally responsible for the proper management of the many programs and activities overseen by the national government. As the “Chief Executive,” and thus the “manager-in-chief” of the country, and as the sole representative and instrument of all the people, modern presidents routinely take the lead in calling for national action to address all manner of problems.

As the “Chief Executive,” and thus the “manager-in-chief” of the country, modern presidents routinely take the lead in calling for national action to address all manner of problems.

Congress as a Southern conservative who did not favor deficit spending, President Lyndon Johnson quickly undertook to champion civil rights and poverty legislation (the monumental Civil Rights Act and the Economic Opportunity Act, better known as the War on Poverty Bill) following the assassination of President Kennedy. President Johnson used the phrase “Great Society” to describe the various programs that he believed would empower Americans to “shape the civilization” that they wanted for themselves. During his tenure as president, and in sharp contrast to Madison’s presidency, the national government enacted the Civil Rights Acts of 1964 and 1965, established the Medicare and Medicaid programs as well as the National Endowment for the Arts and Humanities, and passed legislation to protect wilderness areas and strengthen elementary and secondary education. It is significant that all this action by the national government triggered no constitutional crisis. None of the programs was declared unconstitutional by the Supreme Court, which had made its peace by the 1940s with what came to be called the new “administrative state.”

While the distribution of power within Madison’s “compound” republic has undergone a significant change since the Founding, the argument that programs aimed at poverty, education, health or civil rights fall outside the sphere of proper national authority is not without its prominent advocates. Ronald Reagan, for example, vigorously criticized federal education and civil rights programs during his 1980 presidential campaign. His self-proclaimed goal was “to curb the size and influence of the federal establishment and to demand recognition of the distinction between the powers granted to the federal government and those reserved to the states or to the people.” He labored to reduce federal
spending on social welfare programs and contain federal regulatory activity. While he never succeeded in dismantling the Department of Education, and social welfare spending did go up during his presidency, his rhetoric provoked a national debate over the case for “big government.” Reagan is credited with helping to shape a Supreme Court that would protect the place of the states in the American federal system. The one area that Reagan believed did warrant large-scale action by the federal government was defense. Defense spending increased by over 100 percent between 1980 and 1987.

The distribution of powers within the national government and between the national government and the states arose out of negotiations during the Founding period among the friends and critics of state sovereignty and legislative governance. The constitutional arrangement that emerged out of the Convention of 1787 reflects the Framers’ attempt to match powers with responsibilities. That powers should be divided as well as limited, and that checks should be retained both within and among governments in the United States, has not been controversial for the very reason that limited and divided government is accepted by all Americans as being good for both liberty and competent government. Where the line should be drawn in the distribution of powers will be a subject of controversy as long as Americans are serious about the preservation of personal liberty on the one hand, and the requirements of competent and decent government on the other.

Dr. David Marion is Director of the Wilson Center for Leadership in the Public Interest and Elliott Professor of Government and Foreign Affairs at Hampden-Sydney College. He is the author of an award winning book The Jurisprudence of Justice William J. Brennan, Jr.: The Law and Politics of ‘Libertarian Dignity’ as well as the co-author of The Deconstitutionalization of America and Founders and the Constitution. His essays on constitutional and administrative law, public administration and American political thought have appeared in the Alabama Law Review, the Bill of Rights Journal, and the Review of Politics, among other journals and books.
OVERVIEW

James Madison, justly recognized as the “Father” of the Constitution, believed that republican liberty was best preserved by the strict enumeration of governmental powers. At the Constitutional Convention, Madison recommended that the national government be empowered to grant charters of incorporation for the construction of canals in order to promote transportation and commerce among the states. This recommendation, however, was not adopted by the delegates. Decades later, President Madison refused to sign legislation authorizing the expenditure of federal funds to support “internal improvements.” With this veto, Madison revealed the depth of his commitment to a strict interpretation of the principle of delegated and enumerated powers.

OBJECTIVES

Students will:
- Understand James Madison’s view of federal power.
- Understand Madison’s reasons for viewing unlimited federal power as a threat to liberty.
- Apply Madison’s reasoning to determine how he would have assessed the constitutionality of federal laws.
- Appreciate Madison’s contributions to limited government and liberty.

CRITICAL ENGAGEMENT

Question

What was President James Madison’s view of federal power?

MATERIALS

- Handout A: James Madison and the Bonus Bill
- Handout B: Article I, Section 8 Slips
- Handout C: To Veto, or Not to Veto?
- Handout D: Madison, Federal Law, and You

BACKGROUND/HOMWORK

A. Have students read Handout A: James Madison and the Bonus Bill and answer the questions.

B. Choose five students and assign them the roles of James Madison, James Wilson, Ben Franklin, Roger Sherman, and Rufus King. Let them know that next class you will invite them to improvise a scene that might have taken place at the Constitutional Convention during debate on Madison’s proposal that Congress be given power to grant charters of incorporation for the construction of canals.
In their role play, they should include:
- Madison, Wilson, and Franklin’s reasons for suggesting and supporting the proposal
- Sherman and King’s reasons for objecting to the proposal

**Warm Up** [10 minutes]
Have the five students perform their scenes using Handout A.

**Activity** [30 minutes]

A. Arrange desks in a circle. Using a hat, nametag, or other object, designate one student to play the role of “President Madison.”

B. Give the other students, who will serve as “Congress,” one slip each from Handout B: Article I, Section 8 Slips.

C. Put up an overhead of Handout C: To Veto, or Not to Veto. Reveal the first proposed federal law, taking care not to reveal the outcome. Members of “Congress” should examine their slip from Handout B and decide if it gives them the power to pass this bill. If they believe it does, they should raise their hand and explain their reasoning to the group.

D. “President Madison” should now decide whether to sign or veto it. Remind the student playing Madison that s/he should assess the constitutionality of the proposal as President Madison would have.

E. Reveal the outcome using Handout C.

F. Have students pass their slip or President Madison object to the person to their left. Repeat the activity for the rest of the proposed laws.

G. Have students complete Handout D: Madison, Federal Law, and You individually in class or for homework.

**Wrap-up** [10 minutes]

A. Ask students to recall Sherman and King’s objections to the proposed power of Congress to grant charters of incorporation for the construction of canals. Have any of those objections become relevant today?

**Homework**
Have students read Madison’s veto message to Congress at www.ArticleII.org/FederalPower and put each paragraph into their own words. How would they summarize his veto message in one sentence?

**The Issues Endure**
Have students use recent news articles, such as those found at www.BillofRightsInstitute.org/headlines to analyze similarities and differences between Madison’s understanding of the powers of the federal government and current approaches to its powers. How are terms such as “earmarks,” “pork-barrel projects,” and “logrolling” related to these current controversies?
James Madison walked into the Philadelphia tavern alone. It was May of 1787 and none of the other delegates to the Constitutional Convention had arrived yet. Madison was the only one there. But he didn't mind. After all the thinking and writing and planning he'd done on what the new government should look like, he didn't mind a few more days. Madison pulled up a chair, dropped a stack of papers and several heavy books on the wooden table, and sat down to review his notes once more.

The Constitutional Convention

The Convention began in late May, and as the summer went on the delegates came to agreements on many aspects of the new federal government. Many of James Madison’s ideas formed the backbone of the new constitution: a plan for a republic that was “partly national, and partly federal,” as Madison would later describe it. The new national government was to have “national powers,” which had “national ends” or purposes for the entire nation. The states retained important powers to address tasks that did not require national direction or management.

On September 14, as the Convention drew to a close, James Madison, along with delegates Benjamin Franklin and James Wilson, proposed that Congress be given the explicit power to grant charters of incorporation for the construction of canals. They believed this would allow the federal government to promote transportation and commerce among the states. Madison explained that, since the new constitution would remove the political obstacles among the states, “a removal of the natural ones as far as possible ought to follow.”

But delegate Roger Sherman of Connecticut objected. He pointed out that the people of the whole nation would be taxed for such internal improvements but the economic benefits would be felt only in the specific locations where they were built. Fellow New Englander Rufus King also objected, noting that these projects would lead to competition among the states for the federal funds to be spent. The proposal failed. Thus began a controversy as old as the Constitution: To what extent and in what ways does the Constitution permit Congress to spend money to promote the “general welfare”?

President Madison

James Madison was elected president in 1808. In his first Inaugural Address, President Madison pledged “to support the Constitution, which is the cement of the Union, as well in its limitations as in its authorities; to respect the rights and authorities reserved to the States and to the people...”

By 1815, President Madison presided over a country of eight million people. The nation spread over the territory from the Atlantic seacoast past the Appalachians, from Maine to Georgia, and spilling into the area along the Mississippi River. Commerce, transportation, and communication across this vast territory were difficult and, for some areas, practically nonexistent. It was clear that without significant improvements in the nation’s infrastructure, the commercial and agricultural development of the new nation would be crippled. But who would provide this new...
development: the federal government, or the states?

President Madison agreed with Thomas Jefferson that, while such improvements were desirable, even essential, it would be necessary to amend the Constitution in order to give Congress the authority to embark on such projects. When Madison was able to turn his attention to domestic policy after the end of the War of 1812, he urged that Congress propose a Constitutional amendment that would authorize the federal government to begin building national roads and canals.

The “Bonus Bill”

Congress did not address the constitutional issue. Instead, the Congress drafted a bill that would apply profits from the newly reauthorized National Bank toward the building of roads and canals. In his last official act as President, Madison vetoed the “Bonus Bill” as it was called.

In his veto message, Madison noted that neither the power to regulate commerce, nor to provide for the common defense, nor to promote the general welfare could be understood to grant Congress the power to construct roads and canals. He wrote that “the legislative powers vested in Congress are specified and enumerated in the eighth section of the first article of the Constitution, and it does not appear that the power proposed to be exercised by the bill is among the enumerated powers, or that it falls by any just interpretation with the power to make laws necessary and proper for carrying into execution those or other powers vested by the Constitution in the Government of the United States.”

In Madison’s view, the fact that an important policy was a great idea and would lead to significant improvements did not make it constitutional: “I am not unaware of the great importance of roads and canals and the improved navigation of water courses... But seeing that such a power is not expressly given by the Constitution, and believing that it cannot be deduced from any part of it...I have no option but to withhold my signature from it.”

Finally, Madison believed that interpreting the powers of the federal government too loosely would lead the federal government to become too powerful. He wrote, “the permanent success of the Constitution depends on a definite partition of powers between the general and the state governments, and that no adequate landmarks would be left by the constructive extension of the powers of Congress as proposed in the bill.” If the limits of the Constitution were not respected, the national government would overpower the state governments.

Because of his conviction that the powers of the federal government must be limited to those enumerated by the Constitution, President Madison used the veto power to prevent the Congress from carrying out a goal that he himself had advocated thirty years earlier.

COMPREHENSION AND CRITICAL THINKING QUESTIONS

1. What proposal of Madison’s regarding canals was voted down at the Constitutional Convention?
2. Why did Roger Sherman and Rufus King object to Madison’s proposal at the Convention?
3. What was the “Bonus Bill”?
4. Why did Madison veto the “Bonus Bill”?
5. Do you believe Madison was correct to veto the “Bonus Bill”? Why or why not?
Clause 1
The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

Clause 2
The Congress shall have power ...To borrow money on the credit of the United States;

Clause 3
The Congress shall have power ...To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

Clause 4
The Congress shall have power ...To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

Clause 5
The Congress shall have power ...To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

Clause 6
The Congress shall have power ...To provide for the punishment of counterfeiting the securities and current coin of the United States;

Clause 7
The Congress shall have power ...To establish post offices and post roads;
Cl**ause 8**

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

---

Cl**ause 9**

The Congress shall have power ... To constitute tribunals inferior to the Supreme Court;

---

Cl**ause 10**

The Congress shall have power ... To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

---

Cl**ause 11**

The Congress shall have power ... To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

---

Cl**ause 12**

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

---

Cl**ause 13**

The Congress shall have power ... To provide and maintain a navy;

---

Cl**ause 14**

The Congress shall have power ... To make rules for the government and regulation of the land and naval forces;
Clause 15

The Congress shall have power ... To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

Clause 16

The Congress shall have power ... To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

Clause 17

The Congress shall have power ... To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;

Clause 18

The Congress shall have power ... To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.
1. **Congress wants to authorize the creation of a National Bank.**

   **Outcome:** On April 10, 1816, Congress passed an act entitled “An Act to Incorporate the Subscribers to the Bank of the United States.” President Madison agreed with the constitutionality of this act. Many states opposed branches of the National Bank within their borders. In *McCullough v. Maryland* (1819), the Supreme Court upheld the creation of the bank.

   Supreme Court Chief Justice John Marshall wrote, “Should Congress, in the execution of its powers, adopt measures which are prohibited by the constitution; or ... pass laws for the accomplishment of objects not entrusted to the government; [the Court would] say that such an act was not the law of the land....

   Although, among the enumerated powers of government, we do not find the word ‘bank,’ ...we find the great powers to lay and collect taxes; to borrow money; to regulate commerce ... Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.”

2. **Congress wants to pass a bill establishing a national minimum wage and a maximum 44-hour work week.**

   **Outcome:** Congress enacted the Fair Labor Standards Act in 1938, claiming power to do so under the Commerce Clause (Clause 3). It was signed by President Franklin Roosevelt and upheld by the Supreme Court in *United States v. Darby* (1941).

3. **Congress wants to pass a bill creating “gun-free school zones,” making it illegal to have a firearm in school zones.**

   **Outcome:** Citing its power to regulate interstate commerce, Congress enacted the Gun-Free School Zones Act of 1990 which made it a federal crime to possess a gun in the vicinity of schools. The Act was signed into law by President George H. W. Bush. The Supreme Court struck the law down on the grounds that Congress had exceeded its constitutional authority under the Commerce Clause in *US v. Lopez* (1995).

4. **Congress wants to pass a law called the Controlled Substances Act. Among many other regulations, the law bans possession of marijuana.**

   **Outcome:** In *Gonzalez v. Raich* (2005), the Supreme Court upheld the Controlled Substances Act and affirmed the power of the executive branch to ban local use and cultivation of marijuana, even for medical purposes. The Court reasoned, “The [state] exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market.” Therefore, the Court argued, the “aggregate impact on the national market” would be “substantial.” Because personal use would substantially affect interstate commerce, the Court held it was within Congress’s power to regulate.
<table>
<thead>
<tr>
<th>Law/Case</th>
<th>What did the challenged law do?</th>
<th>Do you believe Madison would have signed this bill?</th>
<th>Why or why not?</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Bonus Bill” (1817)</td>
<td>Congress would apply profits from the newly reauthorized national bank toward the building of roads and canals.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>McCulloch v. Maryland (1819)</td>
<td>Congress authorizes the creation of a National Bank.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fair Labor Standards Act (1938)</td>
<td>Congress sets a national minimum wage, and a maximum 44-hour work week.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Overview

While many of President Theodore Roosevelt’s predecessors saw themselves as servants of Congress, Roosevelt saw the President as the servant or agent of the people. He transformed the legislative role of the President from nominal legislative advisor to outspoken advocate of policies that he thought would strengthen America. Where the Founders believed that powers not granted were forbidden, Roosevelt asserted that powers not forbidden were granted. He was aware that he was shaping the Presidency in a way his detractors would criticize. In his autobiography, Roosevelt wrote that he did not “usurp” power, but that he did “greatly broaden” executive authority. One way he did this was to use his position as a “bully pulpit.”

Objectives

Students will:

- Understand ways Theodore Roosevelt used his office as a “bully pulpit.”
- Analyze the constitutionality of Roosevelt’s actions as President.
- Evaluate ways that Roosevelt transformed the Presidency.

Materials

- Handout A: Theodore Roosevelt and the Bully Pulpit
- Handout B: President Roosevelt and the Constitution
- Appendix B: The United States Constitution

Critical Engagement Question

How did Theodore Roosevelt’s use of the Presidency as a “bully pulpit” transform the office of President?

Background/Homework

Have students read Handout A: Theodore Roosevelt and the Bully Pulpit and answer the questions.

Warm Up [20 minutes]

A. Using available technology, print or project an image of the cartoon found at: www.BillofRightsInstitute.org/Presidents/TheodoreRoosevelt. On the board, write the words “bully pulpit” and go over the definition from Handout A “a wonderful place from which to preach.” Ask students about the image:

- Who is depicted in the picture?
- How does this image of Theodore Roosevelt illustrate the “bully pulpit”?
- What does the cartoonist’s opinion of Roosevelt seem to be?
B. Have students listen to an audio recording of Roosevelt’s speech entitled “Social and Industrial Justice” found at memory.loc.gov/ammem/collections/troosevelt_film/trfsnd.html. (A transcript is also available at this site.) As a large group, discuss the questions:

- What reforms does Roosevelt propose?
- How does the tone (the mood or emotion) of his speech compare to speeches given by more recent Presidents or presidential candidates?
- How does this speech illustrate Roosevelt’s use of the “bully pulpit”?

**Activity [20 minutes]**

A. Working in pairs, have students re-read Handout A to identify instances where Roosevelt used the bully pulpit to urge action or reforms. They should record their ideas on Handout B: President Roosevelt and the Constitution.

B. Distribute copies of Appendix B: The United States Constitution. Have students read Article II of the Constitution, as well as Article I, Section 7. Ask students to summarize the powers of the president. Responses should include: sign or veto laws; act as Commander-in-Chief of the military; appoint Supreme Court Justices and make other appointments; enforce the laws; report to Congress on the state of the union and recommend measures for their consideration.

C. Have students complete Handout B by analyzing the Constitution and the powers it grants the president. See the Answer Key for suggested responses.

**Wrap-Up [10 minutes]**

As a large group, discuss the questions:

- Did Theodore Roosevelt exercise his presidential powers in a way that was consistent with the Constitution?
- If not, what was “extra-constitutional” or even “contra-constitutional” about his actions?
- How did Roosevelt transform the Presidency? Was this change for better or worse?

**Homework**

At the Constitutional Convention, the Founders debated the advantages and disadvantages of a single executive. While Edmund Randolph regarded a single executive as the “fetus of monarchy,” James Wilson countered that “unity in the Executive … would be the best safeguard against tyranny.” Have students assess each of these predictions in light of Theodore Roosevelt’s actions as President.

**Extension**

Have students browse political cartoons and select one which depicts a constitutional issue to interpret for the class next time. Suggested resources:

- www.theodore-roosevelt.com/frames.html
- www.theodorerooseveltcenter.com/Cartoons.asp
The Vice President exited his stage coach at North Creek Station in New York. Almost immediately, someone shoved a telegram in his hands. He solemnly read the news that President William McKinley had died from bullet wounds received from an assassin’s gun. Theodore Roosevelt stepped aboard his train bound for Buffalo, where he would take the Oath of Office. He told a friend, “It is a dreadful thing to come into the presidency this way; but it would be a far worse thing to be morbid about it.”

The First Three Years

The youngest person ever to become President, Roosevelt brought energy and vigor to the White House. Where his predecessors had been reserved and cautious, Roosevelt was outspoken and unabashed. He was excited by the chance he had to use what he called the “bully pulpit” (“bully” meaning “wonderful” and “pulpit” meaning “a preaching position”) to spread his ideas, to persuade, and to change. He said famously: “I suppose my critics will call that preaching, but I have got such a bully pulpit!”

His use of the bully pulpit contributed to the greatest expansion of federal power in the country’s history to that time.

Roosevelt spoke boldly in his first message to Congress. He believed monopolies damaged the general welfare and called for the creation of a new executive department to monitor big corporations, called trusts. The Department of Labor and Commerce was created in response to this call in 1903.

The Bully Pulpit Abroad

Roosevelt was elected President in 1904 with the greatest popular majority to that point. In his inaugural address he expressed his “fixed determination to show that under a free government a mighty people can thrive best.” One way the US could “show” the world was through its relationships with other nations: “We have become a great nation, forced by the fact of its greatness into relations with the other nations of the earth...We wish peace, but we wish the peace of justice, the peace of righteousness.” His views on foreign affairs were summed up with the proverb he often called his motto, “Speak softly and carry a big stick.”

Roosevelt was willing to interfere in the affairs of other nations when it benefited the United States. By helping revolutionaries in Panama win independence from Columbia, Roosevelt created conditions that allowed for US construction of the Panama Canal and a 100-year lease on the Canal Zone. His corollary to the Monroe Doctrine prevented foreign bases from being established in the Caribbean. Demonstrating to the world that the US was a great naval power, he sent the Great White Fleet around the world. In 1905, he helped negotiate an end to the Russo-Japanese War. This achievement won Roosevelt the Nobel Peace Prize.

The Bully Pulpit At Home

At home, Roosevelt expanded the federal government’s ability to acquire land. He signed laws establishing five national parks. He broadened ex-
Roosevelt used the bully pulpit to persuade Congress that “the great development of industrialism means that there must be an increase in the supervision exercised by the government over business enterprise.” Explaining his fight for a “square deal” for Americans, he used authority under the Sherman Anti-Trust Act to take on powerful consolidated companies. He worked to protect companies from extreme demands from labor unions. He urged federal lawmakers to enact legislation protecting workers, including child labor laws and a bill providing workmen’s compensation for all federal employees. He proposed laws regulating the nation’s food supply. In response, the Pure Food and Drug Act of 1906 was passed, paving the way for the Food and Drug Administration (FDA).

Historians note that Roosevelt’s efforts to curb corporate power did not mean he was against capitalism. Roosevelt was a capitalist. But he tried to curb what he saw as the excesses of capitalism so that socialism—on the rise around the world—would not take root in the United States. His proposals moved Congress to act.

**The Energetic Executive**

Roosevelt gave a broad interpretation to the opening words of Article II—vesting the “executive power” of the United States in the President—and his oath of office. The President is not a lawmaker. The Constitution permits him or her only to “recommend measures” to Congress for their consideration. Roosevelt sent more than 400 messages to Congress. Roosevelt seized these and other opportunities to accentuate the leadership responsibilities of the President.

Roosevelt was criticized for many of his actions. Some disapproved of his turning the US into an international police power. Some condemned his decision to send the Great White Fleet around the world, arguing that he forced Congress’s hand to spend the money needed for this endeavor. Many charged that the many regulatory agencies he proposed threatened liberty. President William Howard Taft, who succeeded Theodore Roosevelt as President in 1916, said that Roosevelt’s view of “ascribing an undefined ... power to the President” was “an unsafe doctrine,” that could do permanent “injustice to private right.” Some later historians have called Roosevelt an activist president, because of the way his actions increased the power of the federal government over states and individuals’ lives.
**President Roosevelt and the Constitution**

**Directions:** As you read the Background Essay, identify issues in which President Theodore Roosevelt used the “bully pulpit.” Then analyze the Constitution to find where, if anywhere, the President gets the power to act as Roosevelt conducted himself. Finally, fill in the third column with your opinion about how this action may have transformed the presidency.

<table>
<thead>
<tr>
<th>Use of the “bully pulpit”</th>
<th>Where in the Constitution?</th>
<th>How did this transform the presidency?</th>
</tr>
</thead>
<tbody>
<tr>
<td>He explained the need he saw to regulate “corporations engaged in interstate commerce.”</td>
<td>Article II, Section 3: He ... recommend to [Congress's] consideration such measures as he shall judge necessary and expedient...</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Overview

While questions were raised in the Eighteenth and Nineteenth Centuries over the proper distribution of power between state and federal governments, debate over the power of the federal government to regulate the every day affairs of the people intensified in the second half of the Twentieth Century. Lyndon Johnson, interpreting Congress’s role to promote the “general welfare” broadly, assembled a team of experts to discover ways to improve society, and sent dozens of bills to Congress which became Great Society programs intended to benefit the poor and the elderly. Ronald Reagan, by contrast, called the War on Poverty a failure, and proposed budgets which reduced spending on social programs while increasing the size and capabilities of the military. Additionally, Reagan called for lower taxes to spur economic growth, reward perseverance and encourage personal responsibility. The two Presidents had markedly different views on the purposes and constitutional powers of the federal government and carried out the duties of their offices accordingly.

Objectives

Students will:

- Understand Lyndon Johnson’s stated goals for the Great Society.
- Understand Ronald Reagan’s stated goals for his administration.
- Contrast and evaluate the two Presidents’ views on the scope of constitutional federal power.

Critical Engagement Question

How did President Lyndon Johnson’s Great Society Speech and President Ronald Reagan’s First Inaugural Address reveal their views on the constitutional powers of the federal government?

Materials

- Handout A: Lyndon Johnson and Ronald Reagan: Two Views of Federal Power
- Handout B: Who Said It?
- Handout D: First Inaugural Address, Ronald Reagan, 1981
- Handout E: Wordles
- Appendix B: The United States Constitution

Background/Homework

Have students read Handout A: Lyndon Johnson and Ronald Reagan: Two Views of Federal Power and answer the questions.
Day One

Warm Up [20 minutes]

A. Before class, copy, cut out, and post around the room the quotations on Handout B: Who Said It? Have students circulate around the room and mark on their own numbered paper whether they believe each statement was made by Lyndon Johnson or Ronald Reagan. When students have finished, go over the correct responses as a large group.


Activity I [35 minutes]

A. Divide the class into pairs. Give each pair one copy each of Handout C: “The Great Society,” Lyndon Johnson, 1964 and Handout D: First Inaugural Address, Ronald Reagan, 1981. Allow students time to read the speeches.

B. Give each pair two highlighters of different colors. They should highlight sentences where the speaker suggests increasing federal power in one color, and sentences where the speaker suggests scaling back federal power in the other color. Have students look at the speeches side by side when they have finished. What do they notice?

Day One

Activity II [30 minutes]

A. Using Handout C, have students skim the Johnson speech and underline words or phrases they think are important. In the margins, write down words that come to mind to describe the speech. For example, hopeful, inspiring, etc. Have students repeat this process for the Reagan speech on Handout D.

B. Divide the chalkboard (or presentation technology) in half, and assign one half to each speech.

C. Beginning with the Johnson speech, invite a student to write one word or short phrase on the board that in some way represents the speech—an oft-repeated word, the mood of the speech, etc. The word should be written in a size proportional to the intensity of the connection to the speech. For example, if an idea appears ten times in the speech, it should be written larger on the board than a word which only appeared once.

D. Invite four or five more students to add words/phrases.

E. Repeat this process for the Reagan speech.

F. Distribute or put up an overhead of Handout E: Wordles. Explain to students that the images are a computer-generated display of the frequency of single words within the two speeches. How do they compare to the ones made by the class? How do they compare to each other? Are students surprised by anything in the Wordles?
Wrap-up [20 minutes]
A. Distribute copies of Appendix B: The United States Constitution. Ask students to look at Articles I and II, describing the powers of the legislative and executive branches.
B. Ask students to assess the constitutionality of each President’s actions. Where did the constitutional authority for their actions come from (if anywhere)?

Homework
Have students write one to two paragraphs in response to the questions: Because a federal law is well-intentioned or a good idea, does that mean it is constitutional? If not, what is the difference?

Extensions
Have students select a Great Society law or program and research the following questions:
- What was the law’s goal?
- What programs were put in place under this law?
- What were arguments for/against the program?
- What was the outcome of the law? Did it meet its goal?
- Is this law/program still in place? If not, why was it repealed or discontinued? If so, what arguments exist in favor/against its continuation?

Students may wish to research:
- Economic Opportunity Act of 1964
- Urban Mass Transportation Act of 1964
- Elementary and Secondary Education Act of 1965
- Higher Education Act of 1965
- Social Security Act of 1965
- National Traffic and Motor Vehicle Safety Act of 1966
- Highway Safety Act of 1966
- Public Broadcasting Act of 1967
- Truth-in-Lending Act of 1968
- Bilingual Education Act of 1968
President Lyndon B. Johnson followed in John F. Kennedy’s footsteps in calling for legislation barring racial discrimination in the workplace and in public accommodations such as restaurants and hotels. In 1964, Johnson announced his administration’s biggest domestic goal: the building of a “Great Society.” These programs would go beyond ending racial injustice—a goal to which Johnson believed the US was already committed—to improving and perfecting all areas of life. He explained his plans to the American people in a May 1964 speech at the University of Michigan.

Soon after, fourteen task forces made up of academics and government experts began studying various aspects of American society. These included transportation, education, preservation of natural beauty, and civil rights. Every task force worked directly for the President. Their findings and recommendations were shared among government officials.

Johnson’s Domestic Goals

Johnson was elected President in 1964, carrying all but six states, with 61 percent of the popular vote. In his State of the Union Address the following January, Johnson noted that in a time of great prosperity, it was time to “turn increased attention to the character of American life.”

Johnson outlined some of the measures he recommended to Congress:

I propose that we begin a program in education to ensure every American child the fullest development of his mind and skills. I propose that we begin a massive attack on crippling and killing diseases. I propose that we launch a national effort to make the American city a better and a more stimulating place to live. I propose that we increase the beauty of America and end the poisoning of our rivers and the air that we breathe.

I propose that we carry out a new program to develop regions of our country that are now suffering from distress and depression. I propose that we make new efforts to control and prevent crime and delinquency. I propose that we eliminate every remaining obstacle to the right and the opportunity to vote. I propose that we honor and support the achievements of thought and the creations of art. I propose that we make an all-out campaign against waste and inefficiency....

The President has no power to make law; he can only propose laws to Congress. Johnson submitted eighty-seven bills to Congress. Congress passed eighty-four, and Johnson signed them into law. Great Society programs included Medicare and Medicaid, which provide health care to the elderly and the disadvantaged, and Head Start, which provides preschool and other educational services for poor families.

Critics of Lyndon Johnson charged that he had tried to convince Americans that government could create a utopia—a perfect world. They criticized the goals of his programs as outside the ability of government to achieve. Further, they charged that some of the legislation he had asked for and signed into law was outside the constitutional powers of Congress to enact.

About fifteen years later, the prosperity that had marked Johnson’s time was over and the economy was in a deep recession. Inflation was approaching...
twelve percent, and more than ten percent of Americans were out of work. Presidential candidate Ronald Reagan ran a campaign based on the promises of lower taxes, a strong national defense, and less government involvement in individuals’ lives.

**Reagan’s Domestic Goals**

Reagan was elected President in 1980, carrying forty-four states. In his First Inaugural Address, he stressed the importance of persevering and the power of individuals to control their own destinies. Government, he said, was not the solution to the problem; government was the problem. He asked, “If no one among us is capable of governing himself, then who among us has the capacity to govern someone else?”

Throughout his Presidency, Reagan worked to decrease the size of the federal government, and advocated policies and reforms that he believed empowered individuals. He called for a thirty percent tax cut over three years. Congress passed a twenty-five percent cut, which Reagan signed into law. In eight years as President, he signed a total of nine tax bills providing across-the-board tax cuts.

Reagan also worked to dramatically cut federal spending on domestic programs, because of his concerns about the constitutionality of these programs. He called for $41.4 billion in budget cuts, mostly from Great Society programs. While not touching Medicare and Social Security, Reagan approved cuts in federal education programs, food stamp programs, workplace programs, and other non-military domestic programs.

Believing the US had neglected the military after the Vietnam War, and as the Cold War continued, Reagan asked for increased funds to strengthen the armed forces. By the time he left office, military spending was approximately forty percent greater than at the height of the Vietnam War.

The decrease in taxes and increase in military spending resulted in the biggest budget deficits in the country’s history to that time. The deficits continued each year, but Reagan vowed to veto any tax increases Congress passed.

Unemployment peaked at 10.8 percent in December 1982, higher than any time since the Great Depression, and then steadily went down through the rest of Reagan’s time in office. Sixteen million new jobs were created, and inflation decreased significantly. By the mid 1980s, the economy was booming again.

In 1988, Ronald Reagan, referring to Johnson’s initiatives, declared that the US had fought a war on poverty but that poverty had won. Today, historians and economists debate the constitutionality as well as the outcomes of both presidents’ policies. Some charge that many of Johnson’s programs, while well-intended, have not achieved their goals and should be discontinued. Reagan’s critics assert that his tax plan unfairly benefited the wealthy, and blamed “trickle-down economics” for producing large deficits that deepened the national debt.

**Comprehension and Critical Thinking Questions**

1. What were the goals of the “Great Society” outlined in Johnson’s May 1964 speech?
2. What types of measures did Johnson recommend to Congress in 1965?
3. What was the key message of Reagan’s First Inaugural Address?
4. What actions did Reagan take to bring about his goal?
5. How would you assess the constitutionality of each President’s actions?
1. The purpose of protecting the life of our Nation and preserving the liberty of our citizens is to pursue the happiness of our people.

2. Those who do work are denied a fair return for their labor by a tax system which penalizes successful achievement.

3. I intend to establish working groups to prepare a series of White House conferences and meetings on the cities, on natural beauty, on the quality of education, and on other emerging challenges.

4. We are a nation that has a government—not the other way around. And this makes us special among the nations of the Earth.

5. Our present troubles parallel and are proportionate to the intervention and intrusion in our lives that result from unnecessary and excessive growth of government.

6. We have always prided ourselves on being not only America the strong and America the free, but America the beautiful.
“THE GREAT SOCIETY,”

LYNDON JOHNSON, 1964

Directions: Read the excerpts from President Lyndon Johnson’s speech.

The purpose of protecting the life of our Nation and preserving the liberty of our citizens is to pursue the happiness of our people. Our success in that pursuit is the test of our success as a Nation. "I)n your time we have the opportunity to move not only toward the rich society and the powerful society, but upward to the Great Society.

The Great Society rests on abundance and liberty for all. It demands an end to poverty and racial injustice, to which we are totally committed in our time. But that is just the beginning. The Great Society is a place where every child can find knowledge to enrich his mind and to enlarge his talents. It is a place where leisure is a welcome chance to build and reflect, not a feared cause of boredom and restlessness.

But most of all, the Great Society is not a safe harbor, a resting place, a final objective, a finished work. It is a challenge constantly renewed, beckoning us toward a destiny where the meaning of our lives matches the marvelous products of our labor.

So I want to talk to you today about three places where we begin to build the Great Society in our cities, in our countryside, and in our classrooms....

In the remainder of this century urban population will double, city land will double, and we will have to build homes, highways, and facilities equal to all those built since this country was first settled. So in the next 40 years we must re-build the entire urban United States. ...Our society will never be great until our cities are great.

A second place where we begin to build the Great Society is in our countryside. We have always prided ourselves on being not only America the strong and America the free, but America the beautiful. Today that beauty is in danger. The water we drink, the food we eat, the very air that we breathe, are threatened with pollution.

A third place to build the Great Society is in the classrooms of America. "...We must seek an educational system which grows in excellence as it grows in size. This means better training for our teachers. It means preparing youth to enjoy their hours of leisure as well as their hours of labor. It means exploring new techniques of teaching, to find new ways to stimulate the love of learning and the capacity for creation.

These are three of the central issues of the Great Society. While our Government has many programs directed at those issues, I do not pretend that we have the full answer to those problems.

But I do promise this: We are going to assemble the best thought and the broadest knowledge from all over the world to find those answers for America. I intend to establish working groups to prepare a series of White House conferences and meetings on the cities, on natural beauty, on the quality of education, and on other emerging challenges. And from these meetings and from this inspiration and from these studies we will begin to set our course toward the Great Society....

These United States are confronted with an economic affliction of great proportions. We suffer from the longest and one of the worst sustained inflations in our national history....

Idle industries have cast workers into unemployment, human misery, and personal indignity. Those who do work are denied a fair return for their labor by a tax system which penalizes successful achievement and keeps us from maintaining full productivity.

But great as our tax burden is, it has not kept pace with public spending. For decades we have piled deficit upon deficit, mortgaging our future and our children’s future for the temporary convenience of the present....

In this present crisis, government is not the solution to our problem; government is the problem. From time to time we’ve been tempted to believe that society has become too complex to be managed by self-rule, that government by an elite group is superior to government for, by, and of the people. Well, if no one among us is capable of governing himself, then who among us has the capacity to govern someone else?...

So, as we begin, let us take inventory. We are a nation that has a government—not the other way around. And this makes us special among the nations of the Earth. Our government has no power except that granted it by the people. It is time to check and reverse the growth of government, which shows signs of having grown beyond the consent of the governed.

It is my intention to curb the size and influence of the federal establishment and to demand recognition of the distinction between the powers granted to the federal government and those reserved to the states or to the people. All of us need to be reminded that the federal government did not create the states; the states created the federal government.

If we look to the answer as to why for so many years we achieved so much, prospered as no other people on earth, it was because here in this land we unleashed the energy and individual genius of man to a greater extent than has ever been done before. Freedom and the dignity of the individual have been more available and assured here than in any other place on earth. The price for this freedom at times has been high, but we have never been unwilling to pay the price.

It is no coincidence that our present troubles parallel and are proportionate to the intervention and intrusion in our lives that result from unnecessary and excessive growth of government. ...So, with all the creative energy at our command, let us begin an era of national renewal. Let us renew our determination, our courage, and our strength. And let us renew our faith and our hope.

Source: http://avalon.law.yale.edu/20th_century/reagan1.asp
Great Society
America's cities are today's classrooms.
Classrooms throughout the land build toward the new next success.
Success is measured by open minds and dedicated capacity.
Open, dedicated minds will help prepare the next generation.
How will this new generation measure up?

New programs are being established.
Projects aimed at new horizons.
Projects aimed to balance education with purpose.
Purpose to fulfill the promise of opportunity and peace.

Better opportunities and abundant abundance.
City building and building cities.
Buildings and children.
Peoples and purpose.
Future and present.

Alternative means.
Meeting third challenges.
Challenges to meet and be met.
Meeting and being met.

Everywhere and in every way.
The cure for pollution cost constantly the cure is constant.
Cost of the cure and cure.
Cure and cost.

Urban double and losses.
Outcomes that are double.
Double outcomes.
Outcomes that are double.

Knowledge, beauty, labor, society.
Society means knowledge.
Knowledge means society.
Society means knowledge.

Winning region.
Winning regions.
Winning regions.
Winning regions.

In every city and city.
In every city.
In every city.

Wordles reprinted courtesy of www.wordle.net
WORDLES (cont.)
Activity [20 minutes]

A. Distribute Constitutional Connection: War and the Constitution on the following page and Appendix C: The Bill of Rights. Have students read the constitutional excerpts and the First, Fourth, Fifth, and Sixth Amendments.

B. With the class working in pairs, small groups, or as a large group, have students analyze these documents to answer questions one through three.

C. Call on individual students to read the First, Fourth, Fifth, and Sixth Amendments aloud. Invite students to put the rights they protect in their own words.

D. Discuss students’ responses to question four as a large group.

To provide an introductory overview of the unit, show the six-minute thematic documentary, Commander in Chief: War and the Constitution, available at www.ArticleII.org/War.
WAR AND THE CONSTITUTION

Directions: Read carefully the following sections of Article I, Sections 8 and 9, and Article II, Section 2. Using your copy of the Bill of Rights, carefully examine the First, Fourth, Fifth, and Sixth Amendments. Then answer the questions that follow.

Article I, Section 8 (1789)
The Congress shall have power...
  To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
  To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
  To provide and maintain a navy;
  To make rules for the government and regulation of the land and naval forces;
  To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;
  To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress...
  To make all laws which shall be necessary and proper for carrying into execution the foregoing powers...

Article I, Section 9 (1789)
The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Article II, Section 2 (1789)
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...

Critical thinking questions

1. What would be a good title for Article I, Section 8? Article I, Section 9?
2. In your judgment, which branch of government has greater war powers, the legislative or executive? Use the Constitution to support your answer.
3. Does the President’s authority as Commander in Chief apply anywhere other than in military situations?
4. Read the First, Fourth, Fifth, and Sixth Amendments. Does the President’s authority as Commander in Chief empower him to act in ways that may violate individuals’ rights, such as those protected by the Bill of Rights? If so, under what circumstances?
John Locke, whose political philosophy helped to inspire and justify the American Revolution, explained that the first people to form civilizations left behind the perfect freedom of the state of nature in order to secure the liberties that mattered most. These, he believed, were the essential rights to one’s life, liberty, and property. The Founders agreed. Benjamin Franklin once opined that “those who would give up essential liberty to purchase a little temporary safety, deserve neither liberty nor safety.” Thomas Jefferson, perhaps paraphrasing his friend, wrote that “a society that will trade a little liberty for a little order will lose both and deserve neither.” Each of these men seemed to recognize that times of tumult and perceived danger pose threats to fundamental freedoms at least as great as those that imperil America’s security. This is especially the case in times of war, when peaceful processes such as diplomacy give way to the use of force. The belief that those who oppose American foreign policy support America’s mortal enemies often results in the chilling of public discourse and the suppression of actual and even suspected dissenters.

Franklin and Jefferson understood that many different forms of government could squelch opposition to the country’s best interests. They also recognized that the regimes best equipped to achieve this aim would be, almost by definition, the most dictatorial and oppressive. The United States, they believed, should aim less to subjugate the opinions of Americans than to implement processes that channeled, moderated, and refined opinions into laws consistent with not only the common good but also the government’s fundamental purpose, which was, as they and their Continental Congress affirmed in the Declaration of Independence, the preservation of “certain inalienable rights” such as “life, liberty, and the pursuit of happiness.” The Revolutionary generation stood so committed to this premise that in 1791, less than a decade after the successful completion of the War for Independence and three years after the enactment of a new federal Constitution, its members ratified the First Amendment, which affirmed that “Congress shall make no law ... abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

The Bill of Rights was only seven years old, however, when Congress joined with the administration of John Adams in passing the 1798 Alien and Sedition Acts. These laws made it a crime—punishable by fines up to $2,000 and prison terms up to two years—to publish “false, scandalous, and malicious writing” intended to bring “into contempt or disrepute” the president or Congress. They also extended from five
to fourteen years the residence requirement for
the naturalization of resident aliens and allowed
the president to imprison or deport any citizens
of hostile nations residing in the United States as
well as unnaturalized aliens from friendly nations
who he considered “dangerous
to the peace and safety of
the United States.” Intended
to strengthen the hand of
the national government as
it waged against France an
undisclosed “Quasi-War,”
these provisions also aimed to
weaken Adams’s Jeffersonian
Republican opponents.

Adams felt some
reluctance in signing off
on these measures. In the
end, he did so in an attempt
to mollify partisan allies
who wished for a formal
declaration of war against France, which he feared
would compromise the new
nation’s independence, lead to
the loss of life, and burden the
treasury. His actions inflamed
the resistance of his opponents,
however. Jefferson and James
Madison, the “father” of the
Bill of Rights, drafted for
the legislatures of Kentucky
and Virginia, respectively,
resolutions questioning the
constitutionality of the measures and calling on
other states to join with them in protest. In the
end, Adams succeeded in making peace with France, a fact that alienated many Federalists
and, together with public hostility to the Alien
and Sedition Acts, contributed to his loss of the
presidency to Jefferson in the election of 1800.
The law regarding sedition expired on the day
that Jefferson took the oath of office.

While Jefferson’s inauguration concluded
one of the earliest crises in American civil
liberties, the election of Abraham Lincoln in
1860 prompted a Civil War that helped to

prove further challenges to the Bill of Rights.
Lincoln, a northern Republican who wished to
halt the spread of slavery to new territories, was
not even on the ballot in ten southern states. By
the day of his elevation to the presidency, seven
states had withdrawn from
the Union. Some have argued
that Lincoln’s first and most
consequential transgression
against civil liberties was his
refusal to recognize the right
of secession. The Constitution
did not expressly preclude
states from withdrawing freely;
had it done so, it is doubtful
that any would have ratified
it. Alexander Hamilton, in
the Federalist Papers, argued
that states could feel confident
joining the union because
they always could withdraw
if they wished. Jefferson, in
the aftermath of the Hartford
Convention, declared that “if any
State in the Union will declare
that it prefers separation … to
a continuance in the union … I
have no hesitation in saying, ‘Let
us separate.’” Lincoln’s refusal to
recognize the secession of South
Carolina—and his consequent
refusal to withdraw US troops
from Fort Sumter in Charleston
harbor—prompted the southern
artillery attack that began the Civil War and
precipitated the secession of Virginia, North
Carolina, Tennessee, and Arkansas.

Maryland, another slave state, seemed
poised to join the Confederacy as well. Had
Maryland seceded, the US capital would have
been surrounded by the Confederate States of
America. To forestall the secessionist movement
there and in other border states, Lincoln
invoked the clause of the Constitution that
allowed Congress, which was not in session, to
revoke habeas corpus “when in cases of rebellion
or invasion, the public safety will require it.”
Free to incarcerate suspected secessionists without charging them with violating any law or providing any evidence that they had done so, US civil and military authorities oversaw the arrest of 13,000 Americans, including John Merryman of Maryland. Roger Taney, Chief Justice of the US Supreme Court, issued a writ of habeas corpus commanding military officials to present Merryman to a magistrate who would determine if there was cause to hold him. When Merryman’s captors refused, Taney ruled unconstitutional Lincoln’s suspension of normal legal procedures. Lincoln refused to recognize this decision. He also refused to do anything to stop the shuttering of many anti-war newspapers, including a handful that his administration directly ordered shut down.

While Lincoln is best remembered as a great emancipator, by his own admission the principal objective of the Civil War—at least the initial one—was to preserve the Union. “If I could save the Union without freeing any slave I would do it,” he wrote in 1862, “and if I could save it by freeing all of the slaves I would do it; and if I could save it by freeing some and leaving others alone I would also do that.” For him, the United States was not merely a means to an end greater than itself but an end in and of itself. Liberty mattered, but the Union—which he viewed as the best arrangement for the protection of the people’s liberties—had to come first. It wasn’t until 1863 that Lincoln began to describe the war’s meaning in terms of living up to the Declaration of Independence’s promise of equality of rights, as he did in the Gettysburg Address, or as punishment for the sin of slavery, as he did in his Second Inaugural.

Woodrow Wilson, who led America into World War I, worried about the effect of war on civil liberties. In advance of America’s entrance as a belligerent nation, he reportedly predicted that Americans would “forget there ever was such a thing as tolerance. To fight you must be brutal and ruthless, and the spirit of ruthless brutality will enter into the very fibre of our national life.” Wilson concluded that the US needed appropriate legislation to deter subversive activities. He supported the Espionage Act of 1917, which criminalized words or deeds that might cause “insubordination, disloyalty, mutiny, [or] refusal of duty” in the military or that interfered with recruitment into the armed forces. The Sedition Act of 1918, meanwhile, prohibited “disloyal, profane, scurrilous, or abusive language” aimed at the national government. As a result, a Wisconsin official was sentenced to thirty months in jail for besmirching a Red Cross fund raiser. A Hollywood producer received a ten-year sentence for a film that portrayed in a negative light one of America’s allies. Its title was “The Spirit of ’76.” All told, at least 8,000 Americans faced prosecution or some other form of government suppression under these laws.

World War I also occasioned a chilling of the climate within America for people whose ancestors hailed from the nation’s adversaries, such as Germany. The climate for Japanese Americans during World War II, however, was far worse. For one thing, Japanese Americans’ persecution as a racial minority was official and specific. President Franklin D. Roosevelt’s 1942 Executive Order #9066 initiated the legal authorization of the forcible internment of about 110,000 Japanese or Japanese Americans in camps in the western half of the United States. Americans with as little as 1/16th Japanese ancestry were exposed to this persecution, which allowed the government to remove adults and children from their homes and businesses so that they could be confined within barbed-wire compounds. It remains unclear how many of these individuals aimed to threaten the national security of the...
United States. In the aftermath of the Japanese bombing of Pearl Harbor, however, a great deal of pressure—at least some of it racially motivated—fell upon Roosevelt. He never expressed remorse for succumbing to it.

These few instances of wartime abridgments of Americans’ civil liberties ignore many others. Some would argue that President George W. Bush’s USA Patriot Act, passed shortly after the September 11, 2001, attacks on America by Islamic extremists, also elevated the nation’s security above the liberty of its citizens. If so, this is nothing new. James Madison explained that “of all the enemies to public liberty war is, perhaps, the most to be dreaded, because it comprises and develops the germ of every other.” International strife, after all, was “the parent of armies,” the costly institutions that spawned “debts and taxes” and throughout history had served as “the known instruments for bringing the many under the few.” Interestingly, the War of 1812, over which Madison presided, offers no real examples of the suppression of civil liberties in an effort to meet wartime goals. Other wars, however, offer examples not only of the curtailment of civil liberty but also of personal and economic choices. Involuntary military conscription and the assumption of war powers over international trade and domestic production have arisen from international conflict. However one defines liberty, history makes clear that, even in the freest of nations, war poses for it great challenges.

Dr. Robert M. S. McDonald is Associate Professor of History at the United States Military Academy. A graduate of the University of Virginia and Oxford University, he earned his Ph.D. at the University of North Carolina at Chapel Hill. He is editor of Thomas Jefferson’s Military Academy: Founding West Point. He is completing an edited collection titled Light & Liberty: Thomas Jefferson and the Power of Knowledge as well as a book to be titled Confounding Father: Thomas Jefferson and the Politics of Personality.
Overview

John Adams was not a “War President”; he did not lead the country through war as Commander in Chief. However, much of his administration was devoted to avoiding war. The 1798 Alien and Sedition Acts, viewed then by some and now by most as a serious challenge to the First Amendment, were signed into law by Adams, who maintained that “national defense is one of the cardinal duties of a statesman.” He did not ask for the controversial sedition law that limited freedom of speech and press, but believed, as Congress did, that provisions facilitating the deportation of foreign nationals and the discouragement of newspaper dissent would help strengthen the United States in the event of war with France. 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.

Objectives

Students will:

- Understand John Adams’s reasons for believing the Alien and Sedition Acts to be a constitutional war measure.
- Analyze arguments for and against the constitutionality of the Alien and Sedition Act.
- Assess the constitutionality of the Alien and Sedition Acts.

Materials

- Handout B: Dinner Party Guests
- Handout C: Dinner Conversation

Critical Engagement Question

Was the sedition portion of the 1798 Alien and Sedition Acts, signed into law by President John Adams, a constitutional war measure?

Background/Homework

A. Have students read Handout A: John Adams and the Alien and Sedition Acts and answer the questions.

B. Show the five-minute thematic documentary Commander in Chief: War and the Constitution, found at www.ArticleII.org/War

Warm Up [10 minutes]

A. Give students one card each from Handout B: Dinner Party Guests. Give students a few moments to become familiar with the information on their card.

B. Have students form groups made up of six different individuals. They should stand, introduce themselves, remain standing and “mingle” as though at a dinner party.
Activity [30 minutes]

A. After dinner party guests have had a chance to mingle, distribute Handout C: Dinner Party Conversation.

B. Before “dinner” begins, have students sit down and write down five questions (one question each for the other people at the table) on Handout C. Encourage students to use not only the information on their dinner party card, but also their own knowledge as well as information from Handout A.

C. Allow “dinner” conversation to proceed, with students asking questions of each other and responding.

D. With about ten minutes left for “dinner,” have students write down the most important question they received, and explain their response on Handout C.

Wrap-up [10 minutes]

A. To wrap up “dinner,” all guests should prepare to make a “toast” (or a “roast”) to President John Adams. Toasts should include Adam’s accomplishments and the guests’ opinions about them. Encourage students to use irony or humor. For example, a guest who supported the Alien and Sedition Acts might say: “To my good friend John, who kept us out of war, and kept us civilized.” A guest who condemned the Acts might say: “To His Majesty Adams, who could wait barely a year in office before trampling upon our most sacred rights.”

B. Have students share their toasts/roasts.

Homework

Have students write two or three paragraphs in response to the following prompt: Why does history seem to blame the President—who is not a lawmaker—for bad laws?

Extensions

While the Virginia and Kentucky Resolutions condemned the Alien and Sedition Acts, ten of the fourteen states responded to those resolutions by issuing proclamations that condemned state interference with federal law, and, in some cases asserting, the constitutionality of the Alien and Sedition Acts. Have students read the Virginia and Kentucky Resolutions as well as the responses of Rhode Island and New Hampshire in response to the Virginia and Kentucky Resolutions. How do the arguments compare and contrast? The documents can be found at: www.ArticleII.org/War/Units.

The Issues Endure

Have students write a two to three page essay in response to the following prompt: One historian describes a “rampant fear of the enemy within” during the time the Alien and Sedition Acts were passed. Has this description applied at other times in US history? Does it apply today? Explain.
The United States was in its infancy when France declared war on England in 1793. Many wanted the US to take sides. President George Washington, believing the US should steer clear of foreign entanglements, declared that the United States would stay neutral. President John Adams also wished to remain neutral. But with pressure from Federalists to support England on one side, and Republicans urging support for France on the other, it was getting harder for Adams to keep American uninvolved.

**John Adams and the French Revolution**

Adams wished to avoid war and to protect the young nation from the revolutionary fervor in France, which Adams believed was contrary to American constitutional principles.

Some believed the new nation should be a natural ally of the French. After all, the French seemed to be fighting to free themselves from an oppressive monarch, just like the American colonists had done. But two revolutions were very different.

The American War for Independence was intended to restore traditional rights. The French Revolutionaries wanted to do away with tradition. They established a new calendar: weeks would now be ten days long, and days would have ten hours, not twenty-four. Religious references were outlawed, and a “goddess of reason” (played by an actress) was celebrated at Notre Dame Cathedral in Paris. Revolutionary leaders, claiming to be working for the “salvation of the people” sent thousands of “enemies of the revolution” to the guillotine during the Reign of Terror from 1793-1794.

Adams wanted to prevent radicalism like this from arising in America. He wrote to a friend that in France, “Reasoning has all been lost. Passion, prejudice, interest, [and] necessity have governed and will govern.” In 1798, the year after he took office as President, Adams explained his fears to the people of Philadelphia. “Our infant republic has scarcely had time to cement its strength ... when these agitations of the human species have affected our people...”

Adams believed that morality, religion, and virtue were the best foundations for a free republic. He believed the passions raging across the Atlantic could not be allowed to take hold in the US. He wanted to protect the US from its enemies, both “within and without.”

**The Alien and Sedition Acts**

France was at war with every major European power. Though Adams wished to avoid war, it seemed unavoidable. The US became involved in what has been called a “Quasi-War” with France. France suspended commerce with the US, and seized hundreds of American ships, because America was trading with England. Congress appropriated money to increase the navy, and authorized raising a provisional army.

In 1797, Adams sent diplomats to France to try to negotiate peace. France refused to receive the diplomats unless they paid a bribe. The American diplomats left. The XYZ Affair, (as it came to be known because the French diplomats were unnamed) further increased anti-French sentiment in the US and the Federalists’ desire for war.

In June of 1798, the Federalist-controlled Congress took up several bills said to be for national security. These
bills required immigrants to wait fourteen years (up from five) to become citizens and vote. They gave the President more power to deport immigrants. And they 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.

John Adams did not ask for these laws; he did not oppose them either. He signed the Alien and Sedition Acts (as they are collectively known) into law on July 14, 1798—the anniversary of the storming of the Bastille in Paris. Adams wished to convey his disapproval of the French Revolution by signing the bills into law on that date.

Although the laws were national security measures designed to quiet support for the French, they were also designed to silence Adams’s political opposition. Immigrants tended to vote Republican. And the only publishers charged under the Alien and Sedition Acts were Republicans.

**State and Federal Responses**

The laws were condemned in some states as violating the First Amendment. The First Amendment (1791) maintains, “Congress shall make no law ... abridging the freedom of speech, or of the press.” James Madison, author of the Bill of Rights, wrote one of the most famous critiques, the Virginia Resolution (1798). Madison 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.”

Other states disagreed. For example, New Hampshire called the law “constitutional, and, in the present critical situation of our country, highly expedient.” Ten of fourteen states condemned the idea that states were the proper judges of the constitutionality of laws.

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, it could not be a violation of rights to punish 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.”

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.

---

**Critical Thinking Questions**

1. Why did President Adams want to quiet support for the French in the United States?
2. What were the Alien and Sedition Acts?
3. What were arguments for and against the constitutionality of these acts?
4. Do you believe the Alien and Sedition Acts were constitutional? Why or why not?
5. Do you think that the threat of war justifies limits on civil liberties? If not, why? If so, what kinds of limits would be constitutional?
Dinner Party Guests

YOU ARE

John Adams

You lost the election of 1800 to Thomas Jefferson a few months ago. You probably lost in part due to the public’s reaction to the Alien and Sedition Acts. You did not ask Congress for the Alien and Sedition Acts, but you signed them into law and enforced them. Explaining your decision, you said, “A pen is certainly an excellent instrument to fix a man’s attention and to inflame his ambition. …I knew there was a need of [the Sedition Act] and I consented.”

You did not want to go to war with France, even though members of your party were calling for it. But you also did not want the French revolution to gain support in the US. Before becoming President, you spent years in diplomatic roles in pre-revolutionary France. You believed the ideas fueling the French Revolution were extremely dangerous.

All of the newspaper publishers arrested under the sedition portion of the Alien and Sedition Acts were supporters of Thomas Jefferson. You and Jefferson were good friends for most of your lives, but by the 1790s he had become your political opponent. You have serious disagreements with Jefferson, and you also think he is a Francophile.

YOU ARE

Thomas Jefferson

John Adams helped you write the Declaration of Independence, and for most of your life, you were friends. You are not particularly friendly right now, though.

You spent time in Paris as the United States’ minister to France, from 1784-1789. You were friends with John and Abigail Adams, who were also in France during part of that time. You sometimes flirted with Mrs. Adams.

You are the leader of the political party that opposes Adams. You strongly believe the Alien and Sedition Acts are unconstitutional. Together with James Madison, you wrote the Virginia and Kentucky Resolutions, which condemned the Acts. In the Kentucky Resolution, you wrote that states should not have to obey unconstitutional laws.

When the revolution began in France, you supported the revolutionaries. You hated the excesses of the revolution even before the Reign of Terror, but you believed their attempt to establish a republic gave hope to the world.

You ran for President in 1800 and defeated John Adams. You hired journalists, including James Callender, to smear Adams in the press.
YOU ARE James Madison

You are the “Father of the Constitution” and the author of the Bill of Rights. You strongly disapprove of the Alien and Sedition Acts and believe they are unconstitutional.

Together with Thomas Jefferson, you wrote the Virginia and Kentucky Resolutions, which condemned the Alien and Sedition Acts. In the Virginia Resolution, you said that the laws attacked the “right of free communication among the people,” and that the First Amendment’s protection of free speech and press were “the guardian of every other right.”

You became Thomas Jefferson’s Secretary of State when he was elected President. You worked hard to keep the United States neutral in the ongoing wars between France and England. You went on to become the fourth President of the United States.

YOU ARE Abigail Adams

You are John Adams’s wife. In the 1780s you spent time living in France with your husband. During that time you became friends with Thomas Jefferson.

You supported your husband’s decision to sign the Alien and Sedition Acts. At times, you feared for his safety. In a letter to your husband, you wrote that you wished US law were strong enough “to punish the stirrer up of sedition.” You believed that a “strong sedition bill” would help bring the country “peace and harmony.”

You wrote to your sister about your fear of mobs in Philadelphia. You wrote of one journalist, “[He] is cursing and abusing daily. If that fellow [and others] are not suppressed, we shall come to a civil war.”

Though you were once close and even flirted a little bit, you have not forgiven Jefferson for his attacks on your husband. You accused Jefferson of helping spread “the blackest calumny and foulest falsehoods.”
Dinner Party Guests

You are James Callender

You are a Scottish journalist living in Richmond, Virginia. Some call you a “scandalmonger.” After reading your work in Europe, Thomas Jefferson paid you to publish negative things about John Adams.

In print, you called Adams “mentally deranged,” and “a hideous hermaphroditical character, which has neither the force of a man, nor the gentleness and sensibility of a woman.” You also wrote that he was planning to crown himself king.

By printing these articles, you violated the Alien and Sedition Acts. You were arrested, convicted, and jailed for nine months in Richmond. President Jefferson later pardoned you along with all others convicted under the Acts.

You are Timothy Pickering

You are John Adams's Secretary of State. You support the Alien and Sedition Acts. Furthermore, you think Thomas Jefferson and James Madison are wrong to argue they are unconstitutional.

You believe the Alien and Sedition Acts were constitutional measures to protect national security. You also do not accept the charge that they violated the First Amendment.

You said, “Because we have the right to speak and publish our opinions, it does not necessarily follow that we may exercise it in uttering false and malicious slanders against our neighbor or our government, any more than we may under cover of freedom of action knock down the first man we meet, and exempt ourselves from punishment by pleading that we are free agents.”
Dinner Conversation

Directions: Read the scenario below and then answer the following questions during your “dinner party.”

It is the summer of 1801. John Adams has left office and Thomas Jefferson is the new President of the United States. You have just arrived at a dinner party. You have to admit you might not have accepted the invitation if you had known who else was going to be there. You hope it is not going to be an awkward night. Then again, maybe it will be a good time to explain some decisions you have made, and even get some things off your chest.

Your identity: ____________________________________________________________

1. Write down one question you have for each person at dinner with you.
   1.
   2.
   3.
   4.
   5.

2. Write down the most important question you were asked at dinner, and your response.

3. In the space below, compose a “toast” to President Adams, or a few sentences “roasting” him.
The “Great Writ” or habeas corpus has been an essential civil liberty guaranteed since Magna Carta. In listing powers denied to Congress, the Constitution notes that “The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” In 1861, Abraham Lincoln invoked this power of Congress—which was not in session—to suspend habeas corpus in certain areas. The next year, as he believed the civil justice system was inadequate to deal with the rebellion, he expanded the suspension throughout the United States and established military tribunals to try citizens charged with disloyalty. In this lesson, students explore Lincoln’s suspension of habeas corpus and constitutional issues surrounding it.

Objectives
Students will:
- explore the events that led to President Lincoln’s suspension of habeas corpus.
- understand the Supreme Court cases ex parte Merryman and ex parte Milligan.
- assess the constitutionality of Lincoln’s actions.
- evaluate Lincoln’s attempt to balance liberty and security during the Civil War with his suspension of habeas corpus in certain areas and eventually the entire nation.

Critical Engagement Question
Did President Abraham Lincoln have the constitutional power to suspend habeas corpus during the Civil War?

Materials
- Handout A: Abraham Lincoln and Habeas Corpus
- Handout B: A Proclamation
- Handout C: Excerpts from the United States Constitution
- Handout D: Case Briefing Sheet
- Handout E: The Ruling

Background/Homework
Have students read Handout A: Abraham Lincoln and Habeas Corpus and answer the questions.

Warm Up [10 minutes]
A. Put up an overhead of Handout B: A Proclamation. Point out the questions, and have students listen for the answers as you read it aloud. Then go over the answers as a large group.
B. Point out to students that in 1861, Lincoln suspended *habeas corpus* in some areas. This 1862 suspension of *habeas corpus* covers the entire nation.

**Activity** [30 minutes]

A. Tell students they will now “try” the case of “Mr. Milligan.” Distribute **Handout C: Sections of the United States Constitution.** Read aloud the scenario of Mr. Milligan, who has been sentenced to death for disloyalty by a military court. Divide the class into groups of appropriate size for: attorneys for Mr. Milligan, attorneys for the US, and the Justices of Supreme Court.

B. Give each group a copy of **Handout D: Case Briefing Sheet.** Have groups complete **Handout D** using **Handouts A, B,** and **C.**

C. With about twenty minutes remaining, allow attorneys for the government to make their case, followed by attorneys from Mr. Milligan.

D. Supreme Court members should then deliberate and announce their verdict.

**Wrap-up** [10 minutes]

A. Tell students that they were debating an actual Supreme Court case from 1866. Using an overhead of **Handout E: The Ruling,** go over the information and ask students if they agree with the Court. Was Lincoln’s action constitutional?

B. Ask students how they would assess Lincoln’s attempt to balance the “strength” of the government with the “liberties of its people”?

**Homework**

Have students make a Venn diagram comparing and contrasting the constitutional issues in *ex parte Merryman* (1861) and *ex parte Milligan* (1866).

**Extension**

Issues of *habeas corpus* have emerged with the wars in Afghanistan, Iraq, and the War on Terror. Have students research Supreme Court cases involving *habeas corpus* such as *Hamdi v. Rumsfeld* (2004); *Hamdan v. Rumsfeld,* (2006); and *Boumediene v. Bush* (2008).

**The Issues Endure**

Have students read President Barack Obama’s executive order closing Guantanamo Bay. What does Obama say about *habeas corpus?* Do you agree with him? The order can be found at: [www.whitehouse.gov/the_press_office/ClosureOfGuantanamoDetentionFacilities](http://www.whitehouse.gov/the_press_office/ClosureOfGuantanamoDetentionFacilities.)
President Abraham Lincoln said in 1864, “It has long been a grave question whether any government, not too strong for the liberties of its people, can be strong enough to maintain its existence in great emergencies.” Leading the United States through civil war, Lincoln had to negotiate this eternal tension between liberty and order.

**Habeas Corpus and the Constitution**

One key safeguard for liberty is the privilege of *habeas corpus*. *Habeas corpus* is the power of a judge to demand the government show cause for putting someone in jail. In other words, *habeas corpus* is what prevents the government from arresting people who have not committed crimes and locking them up without having to answer to anyone. A writ of *habeas corpus* requires that the Executive Branch bring the arrested person to court—literally, the phrase is Latin for “you shall have the body to be subjected to examination” (*habeas corpus ad sub diciendum*). *Habeas corpus* has also been called “the Great Writ,” and has its roots in the *Magna Carta* of 1215.

The Founders knew *habeas corpus* was not only a traditional privilege, but also an essential safeguard of freedom. The Constitution guarantees that “The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” This provision appears in Article I, Section 9, which lists limits on the powers of Congress.

**Habeas Corpus and the Civil War**

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

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

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

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

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

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

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

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

**President Lincoln’s Response**

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

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

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

**President Lincoln’s Response**

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

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

---

**Comprehension and Critical Thinking Questions**

1. What is *habeas corpus*?
2. What does the Constitution say about *habeas corpus*?
3. What were the facts of the case in *ex Parte Merryman*?
4. How did Justice Taney rule? Do you agree with his ruling?
5. When Lincoln asked, “Are all the laws, but one, to go unexecuted, and the government itself go to pieces, lest that one be violated?” what did he mean?
A PROCLAMATION, September 24, 1862

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

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

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

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

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

ABRAHAM LINCOLN

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

2. What two legal measures does this document announce? ________________________________

   ____________________________________________________________________________

   ____________________________________________________________________________

3. What two reasons does Lincoln give for the measures? ________________________________

   ____________________________________________________________________________
Directions: Read the scenario below. Does the President have the power to suspend habeas corpus throughout the entire nation, hold Mr. Milligan, and try him a military court? Use the documents below, along with information from Handouts A and B, to prepare an argument for or against the President.

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

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

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

Sections of the United States Constitution (1787)

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

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

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

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

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

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

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

### Constitutional Question
Does the President have the constitutional power to suspend *habeas corpus* throughout the entire nation, hold Mr. Milligan, and try him a military court?

<table>
<thead>
<tr>
<th>Document/Event</th>
<th>Does this support my case? Why or why not?</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Article I, Sections 8 and 9</em></td>
<td></td>
</tr>
<tr>
<td><em>Article II, Section 2</em></td>
<td></td>
</tr>
<tr>
<td><em>Article II, Section 3</em></td>
<td></td>
</tr>
<tr>
<td><em>The Sixth Amendment</em></td>
<td></td>
</tr>
<tr>
<td><em>Other information:</em> e.g. history, precedent</td>
<td></td>
</tr>
</tbody>
</table>
In *ex parte Milligan* (1866), the Supreme Court ruled that the President could not create military tribunals to try citizens as long as civil courts were operational. Mr. Milligan had the right to be tried by a jury in a civil court.

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

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

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

President Woodrow Wilson worried about the influence of subversive elements in the United States—including at first German-Americans and Irish-Americans, and later socialists, communists, and anarchists. In 1915, Wilson asked Congress to pass laws designed to “crush out” the “creatures of passion” who he believed might topple the US government. Congress heeded this call with the Espionage Act of 1917, amended by the Sedition Act in 1918. Criticized by some as unconstitutional, these laws were defended by Wilson and Congress as war measures to enhance the security of the United States.

Objectives

Students will:

- Understand Woodrow Wilson’s fear of the “poison of disloyalty” in the US.
- Understand challenges to civil liberties in the US before and during World War I.
- Assess constitutional limits on free speech and whether they change during wartime.
- Evaluate the constitutionality of the 1917 Espionage Act.

Critical Engagement Question

Was the Espionage Act of 1917, signed into law by President Woodrow Wilson, a constitutional war measure?

Materials

- Handout A: Woodrow Wilson and the Espionage Act
- Web Resource: Anti-German Propaganda and Additional Trial Exhibits found at www.ArticleII.org/War/Units
- Handout B: Wilson’s Request
- Handout C: The Espionage Act (1917)
- Handout D: “No Conscription” Newsletter
- Handout E: The “Trial of Emma Goldman”

Background/Homework

Have students read Handout A: Woodrow Wilson and the Espionage Act and answer the questions.
DAY ONE

WARM UP [ 15 minutes ]
A. Using available technology, print out or project images of posters found at www.ArticleII.org/War/Units.
B. Have students examine the images and conduct a large group discussion to answer the questions:
   - What is the topic of these posters?
   - How are the different individuals portrayed? Why?
   - What is the goal of these posters?
   - What can you conclude about the “tenor of the times” in the US before the country entered World War I?

ACTIVITY [ 20 minutes ]
A. Have a student assume the persona of Wilson and read the excerpt from his 1915 State of the Union Address on Handout B: Wilson’s Request. Encourage the student playing Wilson to read dramatically.
B. Tell students that recently, one modern member of Congress said about this speech, “[Wilson’s] plea ... astonishes still, as much for its passion as for what it proposes... No president had ever spoken like that before; none has since.” How does Wilson’s speech sound to modern ears? Do students find it “astonishing” or unique? Why or why not?
C. Distribute Handout C: The Espionage Act (1917). Read the law together and clarify any questions students have.

WRAP-UP [ 15 minutes ]
A. Distribute Handout D: “No Conscription” Newsletter and allow students to skim over it. Ask the class: What is this newsletter asking you to do? Did the author of the “No Conscription” newsletter violate the Espionage Act?
B. Tell students that next class they will put the newsletter’s author, Emma Goldman, on trial. Distribute Handout E: The “Trial of Emma Goldman.” Let students know the script contains some direct quotes but is a fictional dramatization.
C. Assign the following roles: Narrator, Emma Goldman, Lead Counsel for Miss Goldman, US Attorney, Leon Frank Czolgosz, President Woodrow Wilson, and three to five judges.
D. Let students know they can stick to the script or add to it as appropriate. They should not omit any parts, though.
E. Prepare copies of Additional Trial Exhibits at www.ArticleII.org/War/Units and allow students to make use of the exhibits. Students who do not play a role may serve as “assistant counsel” to the attorneys on either side, as “law clerks” for the judges, or in other supporting roles of your creation (e.g. Theodore Roosevelt; J. Edgar Hoover; congressional supporters of the Act; World War I soldiers; Kate Richards O’Hare, Rose Pastor Stokes.).
F. Encourage students to file “amicus briefs” (e.g. short, historically accurate statements in support of either the prosecution or the defense).
DAY TWO

ACTIVITY [30 minutes]
A. Arrange the classroom with a desk for a “witness stand,” an open area for attorneys to stand, and enough chairs for judges.
B. Using their guide on Handout E, have students present the trial.
C. At the conclusion of the trial, you may wish to distribute or project the 1918 New York Times story found at www.ArticleII.org/War/Units.

WRAP UP [20 minutes]
Debrief the class, asking students:
- Did Emma Goldman break the law?
- Was the law she was accused of breaking, the Espionage Act, constitutional?
- Was the Supreme Court correct to uphold her conviction under the Espionage Act?

HOMEWORK
A. Have students explain whether they believe the Supreme Court was correct to uphold the constitutionality of the Espionage Act and Emma Goldman’s conviction. They can express their view by: writing one paragraph; creating a poster or flyer; or drawing a political cartoon.
B. Ask students to respond to the following prompt with a short essay:
What if the Espionage Act were passed today? Would it be well received? What similarities and differences apply?

EXTENSIONS
A. Have students research the release of the 1917 film “Spirit of 76” and the subsequent arrest, conviction and jailing of its producer, Robert Goldstein. Why was Goldstein arrested? Was his conviction just? Why or why not?
B. Have students learn more about the trial of Italian anarchists Sacco and Vanzetti. Students can begin their research at www.law.umkc.edu/faculty/projects/ftrials/saccov/saccov.htm.

THE ISSUES ENDURE
The challenge to civil liberties in the US did not end with the conclusion of World War I. More than 4,000 suspected communists and anarchists were arrested across the US from 1918-1921 in what came to be known as the Palmer Raids. Have students research the Palmer Raids, along with violations of civil liberties during World War II, the Vietnam War, and the War on Terror. They should write a two- to three-page essay answering the question: Using history as a guide, do laws “excused on the plea of necessity in wartime” in fact tend to become the “fixed rule” once war is over?
Woodrow Wilson and the Espionage Act

World War I began in Europe in 1914. The United States supported the Triple Entente (France, Great Britain and Russia) and opposed the Triple Alliance (Germany, Austria-Hungary, and the Ottoman Empire). President Woodrow Wilson feared the influence of German immigrants in the United States. Fear of disloyal immigrants was widespread across the US. Wilson said, “Any man who carries a hyphen around with him carries a dagger that he is ready to plunge into the vitals of the republic.”

Many state governments banned the teaching of German in schools. California judged German as “a language that disseminates the ideas of autocracy, brutality, and hatred.” German street names were changed; many began calling sauerkraut “liberty cabbage.”

Eventually, German u-boat (submarine) attacks, anti-German propaganda, and the possibility of a German alliance with Mexico made US entry into the war unavoidable for Wilson. On April 17, 1917, Wilson, who had campaigned for a second term with the slogan, “He kept us out of war,” asked Congress for a declaration of war against Germany. Congress granted his request two days later.

Civil Liberties During World War I

Wilson sent a conscription (military draft) bill to Congress prior to the declaration of war. The draft was detested by many lawmakers as a violation of civil liberties. Some in Congress called it “involuntary servitude,” and “another name for slavery.” The Speaker of the House said there was “little difference between a conscript and a convict”—both had lost their liberty. Despite the initial controversy, Congress passed the Selective Service Act in May, six weeks after the declaration of war. The Supreme Court upheld the constitutionality of the law.

Challenges to Bill of Rights protections for people accused of crimes came with the American Protective League (APL). This group was made of private citizens, authorized by the Attorney General, and worked with federal law enforcement agencies (the FBI did not yet exist) to report disloyal words or deeds. The APL was accused of illegally detaining citizens. Wilson knew about the APL but took no action to stop its activities.

Challenges to the First Amendment

One of the most serious limitations of freedom of speech and press came with the Espionage Act of 1917. This law made it a crime to “cause or attempt to cause insubordination, disloyalty, mutiny, refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States.”

In October of 1917, Wisconsin Senator Robert LaFollette defended freedom of speech in wartime. He said, “I think all men recognize that in time of war the citizen must surrender some rights for the common good which he is entitled to enjoy in time of peace. But sir, the right to control their own
Government according to constitutional forms is not one of the rights that the citizens of this country are called upon to surrender in time of war. ...I am contending, Mr. President, for the great fundamental right of the sovereign people of this country to make their voice heard and have that voice heeded upon the great questions arising out of this war.”

Neither the President nor Congress were persuaded. Instead, Congress passed and Wilson signed an amendment to the Espionage Act with even more restrictive limits on speech and press in 1918. It was a crime to “utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States ... or [to] willfully display the flag of any foreign enemy, or ... willfully ... urge, incite, or advocate any curtailment of production ... or advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated and [to] by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States.”

In the landmark case *Schenck v. United States* (1919), the Supreme Court upheld the Espionage Act. In a unanimous ruling, the Court held that while such a limit on the First Amendment would not be constitutional in peacetime, the law was constitutional because the nation was at war. The government’s interest in fighting World War I outweighed individuals’ right to free speech.

**After the War**

The challenges to civil liberties in the US did not end with the conclusion of hostilities. In 1920, Attorney General A. Mitchell Palmer ordered raids on homes, meeting places, and offices of suspected radicals. Palmer said in 1920, “The tongues of revolutionary heat were licking the altars of the churches, leaping into the belfry of the school bell, crawling into the sacred corners of American homes, seeking to replace marriage vows with libertine laws, burning up the foundations of society.” Six-thousand people, mostly foreign-born, were arrested in the Palmer Raids, as they came to be known.

The 1918 Sedition amendments to the Espionage Act were repealed in 1921. Much of the original 1917 Act, however, remains federal law.

---

**Critical thinking questions**

1. Other than the Espionage Act, name two challenges to civil liberties in the US during World War I.
2. What did the Espionage Act of 1917 outlaw?
3. Why did Wisconsin Senator LaFollete object to the Espionage Act?
4. How was the Espionage Act amended in 1918?
5. Do you believe the Supreme Court was correct to uphold the constitutionality of the Espionage Act? Explain.
6. One modern historian has said, “Never until World War I did the suppression of freedom enjoy the almost unanimous support of the various agencies of the government—national, state, and local.” What information and resources would you need in order to evaluate this claim?
The gravest threats against our national peace and safety have been uttered within our own borders. There are citizens of the United States, I blush to admit, born under other flags but welcomed under our generous naturalization laws to the full freedom and opportunity of America, who have poured the poison of disloyalty into the very arteries of our national life; who have sought to bring the authority and good name of our Government into contempt, to destroy our industries wherever they thought it effective for their vindictive purposes to strike at them, and to debase our politics to the uses of foreign intrigue. ...A little while ago such a thing would have seemed incredible. Because it was incredible we made no preparation for it. We would have been almost ashamed to prepare for it, as if we were suspicious of ourselves, our own comrades and neighbors! But the ugly and incredible thing has actually come about and we are without adequate federal laws to deal with it. I urge you to enact such laws at the earliest possible moment and feel that in doing so I am urging you to do nothing less than save the honor and self-respect of the nation. Such creatures of passion, disloyalty, and anarchy must be crushed out.
Section 3

Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished by a fine of not more than $10,000 or imprisonment for not more than twenty years, or both.
NO CONSCRIPTION!

CONSCRIPTION [the military draft] has now become a fact in this country.

Freedom of speech, of press and assembly is about to be thrown upon the dung heap of political guarantees. But crime of all crimes, the flower of the country is to be forced into murder whether or not they believe in war or in the efficacy of saving democracy in Europe by the destruction of democracy at home....

We oppose conscription because we are internationalists, antimilitarists, and opposed to all wars waged by capitalistic governments. We will fight for what we choose to fight for; we will never fight simply because we are ordered to fight....

We will resist conscription by every means in our power, and we will sustain those who, for similar reasons, refuse to be conscripted.

We are not unmindful of the difficulties in our way ... [but] we feel confident in arousing thousands of people who are conscientious objectors to the murder of their fellowmen and to whom a principle represents the most vital thing in life.

Resist conscription.
Organize meetings.
Join our League.
Send us money.
Help us to give assistance to those who come in conflict with the government.
Help us to publish literature against militarism and against conscription.

NO CONSCRIPTION LEAGUE
20 East 125th St., New York
THE TRIAL OF EMMA GOLDMAN

Directions: Read over your assigned role and be ready to play your part in this fictional “trial.” (The lines of historical individuals are all direct quotations and/or paraphrases of quotations.)

Narrator: Emma Goldman came to the United States from Russia when she was a teenager. She had lived under the tyranny of the Czars and was an anarchist—she believed society should have no government. By the time she was in her twenties, she began lecturing to groups of thousands on the evils of capitalism, marriage, and war. She was very controversial. President Theodore Roosevelt called her a “madwoman … a mental as well as a moral pervert.” She also had ties to violent individuals and groups.

When the US entered World War I in 1917, President Wilson signed a draft bill and a military draft was begun. Wilson also signed the Espionage Act, which, among other things, made it a crime to resist the draft.

Goldman believed governments did not have the just power to wage wars. She believed a military draft was a form of slavery. To express her message, she founded the No Conscription League. On June 15, 1917, federal marshals entered and ransacked Goldman’s apartment. They found, among other papers, the list of names of people who subscribed to Mother Earth, a journal published by Goldman. Goldman and her partner were charged with conspiracy to resist the draft, a federal offense under the 1917 Espionage Act. She was tried by a jury and convicted. Her case has now been appealed to the Supreme Court.

Judge A: Is the government ready to make an opening statement?

US Attorney: Yes, your honor. Miss Goldman’s arrest is justified. Because she was personally opposed to World War I, she worked to found the “No Conscription League.” The purpose of this organization was not only to express ideas, but to actively encourage and offer support to people who resist the draft. This is not speech but action.

Furthermore, though she says she does not believe in the war, she has shown herself to be a supporter of violence when it suits her needs. Miss Goldman met with Leon Frank Czolgosz [Chol-gosh]. As you know, this is the man who assassinated President McKinley. Czolgosz was influenced by Miss Goldman’s words, and asked her to introduce him to her anarchist and socialist friends. She was rightly arrested and convicted under the Espionage Act.

Judge A: Is the defense ready to make an opening statement?

Attorney for Miss Goldman, Ms. Ann R. Kist: Yes, your honor. Emma is not a dangerous radical. She has done nothing more than share her ideas. She believes the pen is mightier than the sword, and abhors violence. She has won the admiration of people like George Orwell and John Dewey. Emma has been a constant victim of paranoid laws in the name of national security, as well as anti-immigrant harassment from private citizens. Now she is charged with conspiracy. How can there be a conspiracy? She has stated everything out in the open. And there is no proof she actually caused anyone to resist the draft.

Yes, some of the things she has said rightfully turn our stomachs. But that doesn’t change the fact that they are just words. And in America, we don’t put people in prison for their words. Even if those words, in this case, are questioning the constitutionality of the draft.
Judge B: Is the government ready to call its first witness?

US Attorney: The United States calls Leon Frank Czolgosz. Mr. Czolgosz, can you tell us when you first met Miss Goldman?

Czolgosz: She set me on fire when I heard her give a speech called “The Modern Phase of Anarchy.” She lectured about political assassination and the glory of martyrdom.

US Attorney: And it was four months later that you shot and killed President McKinley, is that correct?

Czolgosz: Yes.

Judge C: Any questions, Ms. Kist?

Ms. Kist: Mr. Czolgosz, I am confused. Did Miss Goldman order you to kill the President?

Czolgosz: No.

Ms. Kist: And did she assist you in any way in the assassination?

Czolgosz: No.

Judge D: You may step down.

US Attorney: The United States calls President Woodrow Wilson. Mr. President, you signed the Espionage Act into law. Can you tell us the purpose of this law?

Wilson: The gravest threats against our national peace and safety have been uttered within our own borders. There are people pouring the poison of disloyalty into the very arteries of our national life. I urged Congress to enact such laws to save the honor and self-respect of the nation. Such creatures of passion, disloyalty, and anarchy must be crushed out.

Ms. Kist: Mr. President, is there any proof that my client actually caused anyone to resist the draft?

Wilson: No.

Judge A: You may step down.

US Attorney: The United States calls Emma Goldman to the stand. Miss Goldman, you defended the assassin Leon Czolgosz, didn’t you?

Goldman: As an anarchist, I am opposed to violence. But if the people want to do away with assassins, they must do away with the conditions which produce murderers.

US Attorney: You say you are opposed to violence, but didn’t you help a man try to assassinate a Carnegie Steel manager? You assisted in getting a pistol for the man who shot and wounded him, didn’t you?

Goldman: I … insist on my right of free speech. If the police stop me, then it is up to them to explain why... As long as I live I must be a crusader. What I think, what I feel, I must speak. Not for a hundred, not for five hundred years will the principles of anarchy triumph. But what has that to do with it?
**US Attorney:** I am confused about your definition of the word “speech.” Didn’t you offer to help people resist the draft? Is that speech, or action? Isn’t the entire purpose of the No Conscription League to undermine America’s efforts in World War I? You believe governments have no right to make war, don’t you?

**Goldman:** Yes. In May 1917, I helped launch the No-Conscription League. We oppose all wars waged by capitalist governments. We believe that the militarization of America is an evil that far outweighs any good that may come from America’s participation in the war. We will resist conscription by every means in our power. If America had entered the war to make the world safe for democracy, she [America] must first make democracy safe in America.

**US Attorney:** And when you distributed the No-Conscription League newsletter, you were trying to increase opposition to the draft in the United States, is that right?

**Goldman:** Yes.

**Judge B:** Ms. Kist, do you have any questions?

**Ms. Kist:** You’ve been accused of having associations with violent people. What do you say to this?

**Emma Goldman:** As to killing rulers, it depends entirely on the position of the ruler. If it is the Russian Czar, I most certainly believe in dispatching him to where he belongs. If the ruler is as ineffectual as an American President, it is hardly worth the effort. There are, however, some potentates [rulers] I would kill by any and all means at my disposal. They are ignorance, superstition, and bigotry—the most sinister and tyrannical rulers on earth.

**Ms. Kist:** And why did you write the things you did?

**Emma Goldman:** The people are asleep; they remain indifferent. They forge their own chains and do the bidding of their masters....

**Ms. Kist:** You maintain your innocence in this trial, then?

**Emma Goldman:** The free expression of the hopes and aspirations of a people is the greatest and only safety in a sane society. ...The State is itself the greatest criminal, breaking every written and natural law, stealing in the form of taxes, killing in the form of war and capital punishment...

**Ms. Kist:** Thank you.

**Judge C:** Your closing statements, please.
US Attorney: There can be no question that Miss Goldman broke the law. The Espionage Act clearly states that it is a crime to “willfully cause or attempt to cause insubordination, disloyalty, mutiny, refusal of duty, in the military or naval forces of the United States, or ... willfully obstruct the recruiting or enlistment service of the United States.” Her newsletter’s goal was undoubtedly to do just that. Congress has the constitutional power to raise an army and provide for it, and also to prevent people from interfering with it in time of war.

Furthermore, Miss Goldman is in the United States because we are gracious enough to have her. But she is an alien. The United States is justified in sending her back to Russia. It is ridiculous to think the United States must tolerate a non-citizen exercising her “blessings of liberty” by calling for and even working to bring about the destruction of the US.

Ms. Kist: Yes, Miss Goldman’s ideas are shocking. But I am not asking you to like her. I am asking you to acknowledge that her words are protected by the First Amendment to the Constitution. Maybe she broke the law by disobeying the Espionage Act—I will discuss that later—but the Espionage Act is unconstitutional. The First Amendment says “Congress shall make no law ... abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble....” Notice that the amendment does NOT say “except when we are at war,” or “except when dangerous ideas are involved.” It says “NO LAW.”

The US attorney quoted a section of the Espionage Act, but s/he left out an important part. The Act says those actions “to the injury of the service or of the United States” are criminal. Where is the injury? The government has shown no evidence that my client actually harmed the interests of the United States in this war. There is no proof that my client’s speech caused anyone to actually resist the draft. She published out in the open, so there can be no conspiracy.

Judge D: The United States has the constitutional power to punish people who resist the selective draft law. Miss Goldman was charged with conspiracy to resist the draft, a federal offense under the 1917 Espionage Act. She had two arguments in her defense: First, there was no conspiracy because what she did was not secretive but out in the open. Second, there was no proof that she caused anyone to disobey the conscription law.

Both of her arguments are absolutely without merit. What Emma Goldman did was a crime, even if she didn’t succeed in her goal of getting people to resist the draft. This court finds her guilty.
Slavery and the Constitution

Activity [20 minutes]

A. Distribute Constitutional Connection: Slavery and the Constitution on the following page and Appendix B: The United States Constitution.

B. Divide students into pairs and assign an equal number of pairs to analyze the constitutional citations.

C. After allowing a few minutes for students to discuss in their pairs, conduct a large group discussion to fill in the blanks on the chart. Use an overhead to record responses. See the Answer Key for suggested responses.

D. Explain to students that individuals throughout history, including the Founders themselves, have debated whether the Constitution protected slavery, or, on the contrary, doomed the institution of slavery. What do students think?

To provide an introductory overview of the unit, show the six-minute thematic documentary, All Other Persons: Slavery, the Constitution, and the Presidency, available at www.ArticleII.org/Slavery.
## Slavery and the Constitution

**Directions:** Locate each of the following constitutional provisions and explain how it could be read to protect (or not protect) the institution of slavery.

<table>
<thead>
<tr>
<th>Constitution Citation</th>
<th>Constitutional Phrase</th>
<th>How did this protect (or not protect) slavery?</th>
<th>How (if at all) was this amended later?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. the Preamble</td>
<td></td>
<td></td>
<td>This has not been changed.</td>
</tr>
<tr>
<td>2. Article I, Section 2, Clause 3</td>
<td></td>
<td></td>
<td>Changed by Section 2 of the 14th Amendment.</td>
</tr>
<tr>
<td>3. Article I, Section 9, Clause 1</td>
<td></td>
<td></td>
<td>Congress outlawed the importation of slaves in 1808.</td>
</tr>
<tr>
<td>4. Article IV, Section 2, Clause 3</td>
<td></td>
<td></td>
<td>Changed by the 13th Amendment.</td>
</tr>
<tr>
<td>5. Article V</td>
<td></td>
<td></td>
<td>This provision has not been changed.</td>
</tr>
<tr>
<td>6. the Fifth Amendment</td>
<td></td>
<td></td>
<td>This provision has not been changed.</td>
</tr>
<tr>
<td>7. the Tenth Amendment</td>
<td></td>
<td></td>
<td>This provision has not been changed.</td>
</tr>
</tbody>
</table>

Was the Constitution (prior to the ratification of the Thirteenth Amendment abolishing slavery) a pro-slavery document?

*Mark the place on the scale that represents your response:*

- [ ] The Constitution was written to ensure the end of slavery.
- [ ] The Constitution was a pro-slavery document.
On March 4, 1857, outside the east front of the capitol building in Washington, D.C., Democrat James Buchanan of Pennsylvania took the oath of office as fifteenth president of the United States. Buchanan’s Inaugural Address alluded to a landmark decision soon to be handed down by the Supreme Court on the issue of slavery. Whatever the court ruled, Buchanan admonished, Americans must accept it as a final settlement of the controversy. Two days later, Chief Justice Roger B. Taney of Maryland delivered the much-anticipated opinion—a complete victory for the pro-slavery South. The Court ruled that Dred Scott, a Missouri slave whose master had temporarily taken him into a free state and a free territory, could not thereby claim his freedom. The most explosive part of the ruling declared that Congress could not exclude slavery from any western territory without violating the property rights of Southerners protected by the Fifth Amendment to the US Constitution.

Northern antislavery forces roared in anger, both against the ruling itself, and against the new president who had pre-endorsed the decision. Buchanan was accused of being a “Doughface,” a Northern man with Southern principles, who caved in to the South on the moral issue of slavery to further his own political career. Opponents even charged that Buchanan had advance knowledge of the ruling, and that he was part of a vast “Slave Power Conspiracy.” Buchanan, who believed that the Union could only be saved by allowing slavery into the territories and by stopping antislavery agitation, had indeed been secretly tipped off by his friend Justice Robert Grier.

If Buchanan thought taking sides would settle the slavery controversy once and for all, he was sorely mistaken. In framing the Constitution, the Founders resorted to compromise (for example, by counting three-fifths of slave populations in apportioning Congress), and evasion (the document does not even use the word *slave*). Presidents George Washington, James Monroe, and Millard Fillmore also avoided or compromised the issue, recognizing that it could tear the republic apart.

In the 1840s, President James K. Polk, in contrast, ignited the slavery debate by waging war against Mexico and acquiring land upon which the “peculiar institution” might spread. In 1854, President Franklin Pierce further stoked the fire when he signed the Kansas-Nebraska Act overturning the Missouri Compromise of 1820. Instead of being forever free, Kansas and Nebraska would now be organized as territories on the basis of popular sovereignty—the settlers themselves would decide in
a referendum whether or not they wanted slavery. Buchanan’s policies, like Polk’s and Pierce’s, only inflamed matters. When a pro-slavery government was fraudulently elected in Kansas, Buchanan again took the Southern side, supporting it as legitimate. The president’s course not only divided the Democrats along sectional lines, it also fueled the new Republican Party, a Northern organization dedicated to stopping the spread of slavery.

In 1860, Abraham Lincoln of Illinois won the White House, carrying every single Northern state except New Jersey. (Although he was not on the ballot in ten Southern states.) In response to Lincoln’s election, the Southern states seceded from the Union to create their own nation, the Confederate States of America. Buchanan, still in office during the winter of 1860-1861, argued that secession was unconstitutional, but that he as president was powerless to take decisive measures to combat it.

Abraham Lincoln always opposed slavery as an immoral institution that contradicted the Declaration of Independence and made American republicanism look hypocritical. He argued that the Founders had wisely placed slavery on the road to extinction, for example by banning it from the Northwest Territory in 1787, and by ending the international slave trade in 1808 (as soon as the Constitution permitted) under President Thomas Jefferson. In his 1858 Illinois senatorial election campaign, Lincoln tenaciously defended the right of African Americans to enjoy the fruits of their own labor, even when his Democratic opponent, Senator Stephen A. Douglas, played the race card by calling him a “Black Republican” abolitionist.

With his back to the wall on the race issue, Lincoln still refused to concede the biological inferiority of blacks. Nor would Lincoln back down from his opposition to the spread of slavery into the territories. His personal abhorrence of slavery did not, however, mean that he could strike at it as president. Although slavery, coupled with Southern assertion of states’ rights, caused the war, the North fought not to abolish slavery, but to uphold majority rule, to save the Union, and to preserve the world’s only democratic republic. Lincoln understood that if he moved against slavery prematurely, Northern Democrats might turn against the war, and that Maryland, Kentucky, Missouri, and Delaware (all border slave states) might join the South in rebellion. He also recognized that the president lacked the legal and constitutional authority to deprive slaveholders of their property without due process of law.

Unlike his predecessor, Lincoln stretched the powers of the presidency to what he saw as the constitutional limit to emancipate the slaves. He timed and justified emancipation, waiting until it became clear that the North could not win without emancipation, and defending it as a confiscation of enemy war material. The President had first tried unsuccessfully to persuade the loyal border states to accept gradual, compensated emancipation. When Confederate forces under Robert E. Lee invaded Maryland in August 1862, Lincoln made a promise to God that if Lee were driven back to Virginia, he would emancipate. After the Union victory in the Battle of Antietam in September, he kept his promise, issuing a preliminary Emancipation Proclamation,
followed by the final version on January 1, 1863. Since emancipation was a war measure, Lincoln could only emancipate behind Confederate lines, leaving slaves in loyal areas unaffected. Of course, emancipation meant little unless the North won the war. Lincoln now tenaciously fought for both Union and emancipation, refusing to back down from either goal, even when the war bogged down in the summer of 1864 and his reelection seemed unlikely.

When last-minute Northern victories produced a landslide victory November, the Confederacy and slavery were doomed. For Lincoln, two problems remained: He still harbored doubts about emancipation's legality, and blacks in the loyal slave states remained in bondage. Both problems were solved by the Thirteenth Amendment ending slavery, which the president doggedly pushed through Congress.

Lincoln, an adept public communicator, articulated the North's expanded war aims in his Gettysburg Address by referencing the Declaration of Independence. He called for “a new birth of freedom,” and vowing that “government of the people, by the people, for the people shall not perish from the earth.”

Andrew Johnson of Tennessee, a true historical accident who had been vice president for only six weeks, took office upon Lincoln's assassination in April 1865. He had become Lincoln's 1864 running mate as a reward for his Unionism (he was the only Senator from a seceded state to remain loyal to the Union), and to send a message to the South that it was safe to lay down arms. Although Johnson claimed to follow in his predecessor's footsteps by being lenient toward the defeated South, he actually went in a different direction.

A former poor white Democrat from the mountains of east Tennessee, Johnson hated rich planters, African-Americans, and an energetic federal government. He saw the poor whites of the South as the real victims of slavery, believing that they had been held down by a combination of planters and slaves. Johnson opposed the Fourteenth and Fifteenth Amendments, granting citizenship and suffrage to African-Americans, respectively. Instead he pursued a policy of extreme lenience toward the defeated South, even supporting state governments staffed by former Confederate leaders that virtually reenslaved the freedpeople. Johnson obstructed Reconstruction laws so severely that he drove the Republicans in Congress to impeach him in 1867. The impeachment trial ended in acquittal, the prosecution having fallen one vote short of the two-thirds majority of the Senate needed for conviction. Had Johnson been convicted, it might have upset the balance of powers among the federal government's branches and crippled the presidency, allowing Congress to get rid of chief executives it did not like.

Owing partly to Johnson's encouragement, the South dug in its heels against any degree of black equality. Reconstruction thus became a sad chapter in American history, in which African Americans of the South briefly attained rights, only to see them swept away until the Civil Rights Movement of the mid-twentieth century. The silver lining to Reconstruction was the Thirteenth, Fourteenth, and Fifteenth Amendments, passed in 1865, 1868, and 1870, but not permanently enforced for nearly one hundred years.

**President Andrew Johnson**

Johnson pursued a policy of extreme lenience toward the defeated South, even supporting state governments staffed by former Confederate leaders that virtually reenslaved the freedpeople.

Dr. Stuart Leibiger is Associate Professor and History Department Chair at La Salle University. He is the author of *Founding Friendship: George Washington, James Madison, and the Creation of the American Republic*. In 2009, he was recognized as a “Distinguished Lecturer” by the Organization of American Historians.
Overview

During the mid-Nineteenth Century, all three branches of the United States government wrestled with the question of whether the unrestricted spread of slavery was protected by the Constitution. In this lesson, students will evaluate President James Buchanan's reaction to the *Dred Scott* decision in light of our nation's highest principles.

Objectives

Students will:
- Trace the events surrounding the *Dred Scott* decision.
- Examine President Buchanan’s statements regarding the *Dred Scott* decision and the spread of slavery.
- Assess contemporary reactions to the *Dred Scott* decision expressed in newspaper editorials.
- Evaluate various statements regarding the institution of slavery, considering to what extent those statements reflect our nation’s highest principles.

Materials
- Handout A: James Buchanan and the *Dred Scott* Decision
- Handout B: Editorial Analysis of the *Dred Scott* Decision
- Handout C: Slavery and American Ideals

Critical Engagement

**Question**

How did President James Buchanan’s response to the US Supreme Court’s decision in *Dred Scott v. Sanford* (1857) contrast with the United States’s highest principles?

Background/Homework

Have students read Handout A: James Buchanan and the *Dred Scott* Decision and answer the questions.

Warm Up [5 minutes]

As a large group, go over the questions to Handout A. Ask students:
- How would you assess Buchanan’s response to the *Dred Scott* decision, and his hope that the ruling would settle the controversy over the spread of slavery?
- Ask students to brainstorm what America’s highest principles are. Did Buchanan’s response to the ruling reflect or contradict those principles?

Constitutional Connection

To create a context for the lesson, have students complete Constitutional Connection: Slavery and the Constitution.
**Activity I [20 minutes]**

A. Cut out and give eight students one slip each from Handout B: Editorial Analysis of the Dred Scott Decision.

B. Tell students they will now hear some quotes from editorials that ran in newspapers in 1857. Call on one student to read the quotation from his or her slip. The student should NOT reveal the information about the newspaper.

C. Ask the class whether the editorial supports the ruling or condemns it, and clarify any questions.

D. Next, ask students to assess whether the editorial ran in a Northern or Southern newspaper. Have the student inform the class as to the correct answer with the information on the slip. Designate a side of the room for “Northern” and “Southern” and have the student move to the correct side.

E. Repeat the process for the remaining students/editorials.

F. Once all have been completed, have the students with editorials give either a “thumbs up” or “thumbs down” to show their position on the ruling. What patterns are revealed?

G. Ask students what important constitutional principles are highlighted in the editorials. How do the editorial writers refer to concepts such as liberty, federalism, and equality? Editorials that oppose the Dred Scott decision point to such principles as the Founders’ ideals of liberty and equality. Those that support the Dred Scott decision reflect the Constitution’s guarantees of such principles as property rights and states’ powers. Students may say that property rights should never apply to “property” in people.

**Activity II [25 minutes]**

A. Distribute or put up an overhead of Handout C: Slavery and American Ideals. Students should follow directions on the Handout.

B. When students have finished, asked:
   - Which (if any) of these quotes is a good articulation of our nation’s highest principles.
   - What other quotes explain our highest principles?
   - How did President James Buchanan’s response to the Dred Scott decision demonstrate or fail to demonstrate those principles?
   - What do you think his response should have been?

**Homework**

Have students write a one-page paper explaining what America’s highest principles are and in what ways James Buchanan’s reaction to the Dred Scott decision demonstrated or failed to demonstrate those principles.

**Extension**

Have students complete an activity on American ideals and Alexander H. Stephens’ “Cornerstone Speech.” The activity can be found at www.ArticleII.org/Slavery/Units.
President-Elect James Buchanan was about to take office at a time of great turmoil for the United States. The issue of slavery was tearing the country apart. While Buchanan personally opposed slavery on moral grounds and hoped it would eventually end, he believed that the Constitution supported it.

**Setting the Stage:**  
**Dred Scott’s Question**

As Buchanan got ready to take the oath of office, the nation was waiting for a decision from the Supreme Court on the issue of slavery. Dred Scott was the slave of an army physician who had lived for almost nine years in the Wisconsin Territory (now Minnesota), where the Missouri Compromise had outlawed slavery. Upon returning to Missouri, Scott sued for his freedom on the grounds that he had once lived in a free territory. His case eventually made its way to the US Supreme Court. This decision would affect not only Scott and his family, but also the larger question of whether Congress could regulate the spread of slavery.

Buchanan secretly consulted with Supreme Court Justice James Grier and learned that the Supreme Court was going to hand down a pro-Southern decision. Buchanan hoped to put to rest forever the controversy regarding the spread of slavery.

Buchanan’s Inauguration

In his Inaugural Address, Buchanan endorsed the principle known as “popular sovereignty.” Voters in a territory would hold an election to determine whether slavery could exist in that territory. Referring to the Kansas-Nebraska Act of 1854, he said, “...this simple rule, that the will of the majority shall govern, [should settle] the question of domestic slavery in the Territories. Congress is ... to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States.” Buchanan’s approach ignored “Bleeding Kansas,” the violence that had accompanied the settlement of Kansas beginning in 1854.

Buchanan went on to pre-approve the Supreme Court’s upcoming action concerning the future of slavery. “(I)t is a judicial question, which legitimately belongs to the Supreme Court of the United States, before whom it is now pending, and will... be speedily and finally settled. To their decision, in common with all good citizens, I shall cheerfully submit, whatever this may be... all agree that under the Constitution slavery in the states is beyond the reach of any human power except that of the respective states themselves wherein it exists. May we not, then, hope that the long agitation on this subject is approaching its end...?”

Buchanan pretended not to know what the Court’s decision would be, and made it clear that everyone should accept the Court’s interpretation of this constitutional issue as the final answer. Buchanan hoped and believed that, since all three branches of the federal government agreed that the Constitution protected the spread of slavery, the divisive issue would be resolved and slavery would spread—or not—according to the wishes of the voters in their respective states.
Supreme Court Decision
Two days later, the Supreme Court announced a 7-2 ruling against Dred Scott. The Court ruled that Congress had no power to prohibit slavery in the territories and that the Missouri Compromise had been unconstitutional. Moreover, neither Scott nor any black person had any legal rights because blacks were not considered part of the political community when the Constitution was ratified. Slaves were property, and slave owners could not be deprived of their property without due process.

Justice Benjamin Curtis wrote a lengthy dissent. He pointed out that in 1787, free blacks voted in several states, including Massachusetts, New Hampshire, and New York. Therefore, according to Curtis, they were part of the political community and had always been citizens. Furthermore, Curtis supported the constitutionality of the Missouri Compromise because it had been accepted as law for more than three decades.

President Buchanan’s Approach
The Court’s majority opinion supported the idea that there could be “property” in people, as opposed to supporting the rights of enslaved individuals. Far from settling the question of the spread of slavery, the Court’s answer demonstrated that a political solution to the problem was impossible and helped set the stage for the Civil War.

Expansion of slavery became the dominant issue of Buchanan’s presidency. Throughout his term, he maintained that the Constitution protected the right of slaveowners to their property. In his last annual address to Congress on December 3, 1860, after the election of Abraham Lincoln, Buchanan blamed the crisis of disunion on the “long continued and intemperate interference of the Northern people with the question of slavery.”

Buchanan stated that Southern grievances regarding slavery were legitimate. He thought secession was illegal, but believed the President lacked the power under the Constitution to stop it. He denied that the federal government could legitimately force any state to remain in the Union. Repeating a point from his Inaugural Address, he explained that the only thing necessary to preserve the Union was for the slave states “to be let alone and permitted to manage their domestic institutions in their own way.” Buchanan even called for a constitutional amendment specifically recognizing the right of “property” in slaves.

President Buchanan’s hope that the nation would accept the Dred Scott ruling as a final settlement was misguided. And his understanding of the protection of slavery in the Constitution, while consistent with that of the majority both in Congress and in the Supreme Court, was inconsistent with the nation’s highest principles.

Critical Thinking Questions
1. Who was Dred Scott and on what grounds did he sue for his freedom? How did the Supreme Court rule in his case?
2. How did President-Elect Buchanan know in advance how the Court would rule?
3. Why was “popular sovereignty” not an adequate solution to the question of the spread of slavery in the territories?
4. According to Buchanan, why was Congress powerless to regulate the spread of slavery?
5. Why was Buchanan wrong in his belief that the Supreme Court’s answer to Dred Scott v. Sanford would settle the question of the spread of slavery?
“Judge Taney requests the American people to believe that the framers of the Constitution did not know their own minds!”
(I write for the Evening Journal newspaper in Albany, New York.)

“[This decision is] a blot upon our national character abroad, and a long-remembered shame at home.”
(I also write for the Evening Journal newspaper in Albany, New York.)

“If they would let us alone and leave slavery to the states, and to the same protection and privileges enjoyed by all other property under the Constitution, the agitation of the question would come to an end on the instant.”
(I write for the Enquirer in Richmond, Virginia.)

“Slavery is guaranteed by the constitutional compact!”
(I write for the Mercury newspaper in Charleston, South Carolina.)

“We shall acquire, by the decision of the Supreme Court, not one right more than they granted to us before—not one foot of slave territory more than we would have acquired without it.”
(I also write for the Mercury newspaper in Charleston, South Carolina.)
“The late decision of the Supreme Court of the United States, in the Dred Scott case, will bring the enemies of the South face to face with the Constitution of their country.”

(I write for the Federal Union newspaper in Milledgeville, Georgia.)

“Our liberties may be subverted, our rights trampled upon; the spirit of our institutions utterly disregarded.”

(I write for the Tribune newspaper in New York, New York.)

“It strikes at the very vitals of our free institutions.”

(I write for the Republican Journal newspaper in Columbus, Wisconsin.)

Source: facweb.furman.edu/~benson/docs/dsmenu.htm
Slavery and American Ideals

Directions: Read each quotation and decide which constitutional principles(s) it reflects, if any. Draw an arrow from the quotation’s number to the principle(s). Then, on your own paper, explain your reasoning.

1. “It is much to be wished that slavery may be abolished. The honor 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

2. “[The Constitutional Convention] thought it wrong to admit in the Constitution the idea that there could be property in men.”
   –James Madison, 1787

3. “Slavery, or an absolute and unlimited power in the master over the life and fortune of the slave, is unauthorized by the common law.... In the enjoyment of their persons and of their property, the common law protects all.”
   –James Wilson, 1804

4. “I believe [slavery] to be a great political and a great moral evil. ... It is, however, one of those moral evils, from which it is impossible for us to escape, without the introduction of evils infinitely greater.”
   –James Buchanan, 1826

5. “(T)he great truth (is) that the negro is not equal to the white man; that slavery—subordination to the superior race—is his natural and normal condition.”
   –Alexander H. Stephens, Vice President of the Confederate States of America, 1861

6. “I am naturally anti-slavery. If slavery is not wrong, nothing is wrong. I can not remember when I did not so think, and feel. And yet I have never understood that the Presidency conferred upon me an unrestricted right to act officially upon this judgment and feeling.”
   –Abraham Lincoln, 1864
Teacher Notes
Overview

Presidents Buchanan, Lincoln, and Johnson believed that the Constitution protected the institution of slavery. Lincoln came to the conclusion that, in order to preserve the Constitution and the Union it created, he must apply a new understanding of the principles on which the nation was built. The time had come to bring the nation’s policies in line with the of the Declaration of Independence that “…all men are created equal…” In this lesson, students will analyze Abraham Lincoln’s views on slavery and the Constitution as evidenced in the Emancipation Proclamation.

Objectives

Students will:

- Trace the development of Lincoln’s decision to issue the Emancipation Proclamation
- Analyze the Proclamation’s significance as a turning point in the development of the nation.
- Evaluate Lincoln’s understanding of the Emancipation Proclamation as “an act of justice, warranted by the Constitution, upon military necessity.”

Materials

- Handout A: Abraham Lincoln and the Emancipation Proclamation
- Handout B: Setting the Scene

Critical Engagement Question

Did President Abraham Lincoln have the constitutional power to free the slaves in the Confederacy?

Background/Homework

A. Have students read Handout A: Abraham Lincoln and the Emancipation Proclamation and answer the questions.

B. Students who are not familiar with the document should also read the Emancipation Proclamation. This document can be found at www.BillofRightsInstitute.org/Presidents/Lincoln.

Warm Up [5 minutes]

Have four students perform the dialogue on Handout B: Setting the Scene to introduce the lesson.

Activity I [15 minutes]

A. Have students work in small groups to discuss their answers to the questions on Handout A.
B. Reconvene the class and have groups report their answers. Continue the discussion and evaluate the significance of the Emancipation Proclamation. Was it a turning point in the development of the nation? If so, how?

**ACTIVITY II [20 minutes]**

A. Have students work with a partner to write a brief dialog in which “James” and “William,” who were in the crowd at Lincoln’s inauguration, meet again later to discuss and evaluate the Lincoln presidency. Divide the class so that a few students write about such a meeting on each of the following dates: May, 1863; May, 1864; May, 1865.

B. Ask for volunteers to perform their dialogues for the class. After at least one group from each date has performed, debrief the class on their impression of the evolving nature of Lincoln’s views.

**WRAP-UP [10 minutes]**

Write the following lines from the Emancipation Proclamation on the board:

> And upon this act, sincerely believed to be an act of justice, warranted by the Constitution, upon military necessity, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God.

In a large group discussion, ask students to what degree was the Proclamation:

- an act of justice?
- warranted by the Constitution?
- a military necessity?

**HOMWORK**

Have students read the following quotation from Lincoln’s Annual Message to Congress, December 1, 1862, and write two paragraphs explaining the meaning of the following phrases: “We cannot escape history,” and “the last best hope of Earth.”

> The dogmas of the quiet past, are inadequate to the stormy present... Fellow citizens, we cannot escape history... In giving freedom to the slave, we assure freedom to the free—honorable alike in what we give, and what we preserve. We shall nobly save, or meanly lose, the last best hope of Earth.

**EXTENSION**

Have students conduct additional research on Lincoln and his times. Make a timeline to reflect additional significant constitutional questions that arose during the Lincoln presidency. Consider such issues as suspension of *habeas corpus*, presidential pardons, and separation of powers as the President and Congress planned for Reconstruction. Students may begin their research at: lincoln.lib.niu.edu/chronology/abraham_lincoln_chronology.html or www.abrahamlincoln.org/projects/index.asp.
By the time Lincoln took office in March, 1861, seven states had announced their secession. After the fall of Fort Sumter in April, four more states seceded, and the Union Army experienced repeated defeats. Throughout his first year as president, Lincoln maintained—as he had prior to his election—that he would not interfere with slavery where it existed. In December 1861 he wrote, “I have... in every case, thought it proper to keep the integrity of the Union prominent as the primary object of the contest on our part, leaving all questions which are not of vital military importance to the more deliberate action of the legislature.” Lincoln’s personal hatred of slavery never wavered, but he believed slavery was protected by the Constitution.

Wartime President

As a result of Union battlefield losses by July 1862, the President had decided that emancipation was a military necessity. The Secretary of the Navy wrote that Lincoln believed “that we must free the slaves or be ourselves subdued.” Lincoln knew that many thousands of enslaved people were ready to fight for the Union. He wrote, “This is not a question of sentiment or taste, but one of physical force which may be measured ...Keep [that force] and you can save the Union. Throw it away, and the Union goes with it.” If freed slaves could reach the Union lines, they could fight for the Union. Furthermore, emancipation would deprive the South of a significant work force, making it more difficult for the rebels to continue the insurrection. Lincoln agreed to await a Union victory before issuing a preliminary emancipation proclamation.

Lincoln’s sworn duty was to preserve the Union and the Constitution, not to emancipate the slaves. Twice before, Union generals had issued proclamations freeing slaves in specific fields of conflict. Lincoln had rescinded those orders, explaining that such actions overstepped the generals’ proper bounds of authority. “Whether it be competent for me, as Commander-in-Chief of the Army and Navy, to declare the slaves of any state or states, free, and whether at any time, in any case, it shall become [necessary for] the maintenance of the government ... are questions which, under my responsibility, I reserve to myself” Then came the victory at the battle of Antietam, Maryland, where the Union successfully turned back a Southern invasion. Lincoln decided the time had come.

Emancipation Proclamation

On September 22, 1862, Lincoln issued his preliminary proclamation, stating that it would take effect on January 1, 1863. Lincoln issued the proclamation in his capacity as Commander in Chief and stated the military necessity of his action. He ordered slaves freed in areas that were in rebellion against the US as of January 1, 1863. He declared that the military would enforce their freedom and receive former slaves as soldiers. Upon signing the Proclamation, Lincoln affirmed that he had never felt “more certain that I was doing right.” He believed, as the Proclamation stated, this action was “warranted by the Constitution upon military necessity.” He concluded that as Commander-in-Chief of the armed forces, he had the power to do it.
There were many in the North who objected to the Proclamation, such as soldiers who had signed on to save the Union, but not to free the slaves. In his letter to a rally at Springfield, Illinois in August 1863, the President clarified why the Emancipation Proclamation was constitutional: “I think the constitution invests its Commander-in-Chief, with the law of war, in time of war.” He continued, “I issued the [emancipation] proclamation on purpose to aid you in saving the Union.”

Lincoln could not enforce emancipation behind enemy lines. However, the Emancipation Proclamation was an essential first step by the US government toward abolition. Two hundred thousand African Americans fought for the North. By giving the war a new moral purpose, Lincoln changed its character. He realized that the time had come to make the nation’s policies align with the promise stated in the Declaration of Independence that “…all men are created equal…”

In the Gettysburg Address (November 1863), Lincoln expressed his hope that a nation “dedicated to the proposition that all men are created equal” would endure. For Lincoln, the meaning of the war had evolved from preserving the Union to giving it a “new birth of freedom.”

The Civil War continued for more than two more years after the Emancipation Proclamation. Finally, however, the Union prevailed and General Robert E. Lee surrendered in April 1865. The hope to which Lincoln referred was preserved.

The great question on which the Founders had been forced to compromise in order to forge a union—what to do about slavery—became the moral cause through which a new generation saved the Union.

**Critical Thinking Questions**

1. In 1861, what did Lincoln say was the primary object of the war?
2. What made Lincoln decide that emancipation was a military necessity?
3. Why did Lincoln refuse to free the slaves until it was a military necessity?
4. How many slaves were freed by the Proclamation? How many former slaves joined the Union side after the Proclamation?
5. In what ways was the Emancipation Proclamation a turning point in the course of the war and in the history of the United States?
6. Explain why you agree or disagree with each of the following assessments of the Emancipation Proclamation.
   - “The act makes clear that the lives of our heroes have not been sacrificed in vain. It makes a victory of our defeats.” –Ralph Waldo Emerson (1862)
   - “We show our sympathy with slavery by emancipating slaves where we cannot reach them and holding them in bondage where we can set them free.” –William Seward (1863)
   - “[The Emancipation Proclamation was] the central act of my administration [and] the great event of the nineteenth century.” –Abraham Lincoln (1865)
   - “I cannot swallow whole the view of Lincoln as the ‘Great Emancipator.’ ... Anyone who actually reads the Emancipation Proclamation knows it was more a military necessity than a clarion call for justice.” –Barack Obama (2005)
Directions: Read dramatically the script below.

Narrator: Today, on March 4, 1861, as Lincoln delivers his Inaugural Address from the still uncompleted Capitol building, he faces a nation in peril. Visitors James and William are in the crowd of 30,000 awaiting Lincoln’s speech.

James: These are momentous times. Seven states have already announced their secession from the Union, and I hear that more might follow.

William: Yes—we need a strong leader now. Just look at the crowd here! Flags and soldiers are everywhere. I hear one rumor after another—the Confederates are preparing to attack the city, and there’s even an assassination plot against the new President.

James: I’ve read that Lincoln has spent all of the last four months since the election working on his Inaugural Address.

William: He’s famous for how carefully he prepares his speeches, and this will be his most important speech so far. I wonder what he’ll say about slavery.

Narrator: The new President takes the podium and delivers his Inaugural Address. Lincoln explains that he believes secession is unconstitutional and that he intends to do all in his power to save the Union. He also makes clear his duty to “hold, occupy and possess” all federal property. Let’s hear the President now address the important issue of slavery:

President Lincoln: “…I have no purpose, directly or indirectly, to interfere with the institution of slavery in the states where it exists. I believe I have no lawful right to do so, and I have no inclination to do so...”
President Andrew Johnson saw himself as a protector of the United States Constitution during and after the Civil War. In his efforts to preserve and restore the Union, he supported the Thirteenth Amendment ending slavery. The same motive led him to oppose the Fourteenth Amendment because he believed it would infringe on the legitimate powers of the states. In this lesson, students analyze Johnson’s leadership with respect to Reconstruction, and specifically his response to the passage of the Thirteenth and Fourteenth Amendments.

Objectives
Students will:
- Trace the constitutional controversies of Andrew Johnson’s presidency.
- Understand Johnson’s constitutional objections to the Fourteenth Amendment and other elements of Reconstruction.
- Evaluate Johnson’s understanding of the Constitution.

Materials
- Handout A: Andrew Johnson and the Civil War Amendments
- Handout B: Johnson’s First Annual Message to Congress, December 1865

Critical Engagement Question
How did President Andrew Johnson interpret the Constitution with respect to restoring the Union after the Civil War?

Background/Homework
Have students read Handout A: Andrew Johnson and the Civil War Amendments and answer the questions.

Warm Up [10 minutes]
- Show the thematic documentary All Other Persons: Slavery, the Constitution, and the Presidency found at www.ArticleII.org/Slavery.

Activity [30 minutes]
Distribute Handout B: Johnson’s First Annual Message to Congress, December 1865. Depending on students’ reading skills, you may wish to:
- Have students analyze each section individually.
- Have students work in pairs to analyze each section.
Have students work in pairs to analyze one section, and then have students jigsaw into new groups to share their responses.

Make a transparency of Handout B and go over all the chart sections together.

**Wrap-up [10 minutes]**

Reconvene the class and conduct a large group discussion to answer the questions:

- Why do you think Johnson’s plans for “restoration” failed?
- Were his objections to the forced-ratification of the Fourteenth Amendment legitimate? Why or why not?
- In your opinion, did Johnson understand the Constitution correctly?

**Homework**

Have students analyze the Fourteenth Amendment and write a brief essay with one of the following thesis statements:

A. The Fourteenth Amendment radically altered the Constitution.

B. The Fourteenth Amendment merely emphasized principles that were already in the Constitution.

**Extension**

Develop a timeline that shows legislation vetoed by President Johnson. For each law, summarize the following:

- name & date of bill
- purpose of bill
- why Johnson vetoed the bill
- further Congressional action, if any
- outcome of the law, if applicable

Students can begin their research at: [www.presidency.ucsb.edu/data/vetoes.php](http://www.presidency.ucsb.edu/data/vetoes.php) and [www.usconstitution.net/pres_veto.html](http://www.usconstitution.net/pres_veto.html)

**The Issues Endure**

Have students research Supreme Court cases involving the Fourteenth Amendment, including: the *Slaughterhouse Cases* (1873), the *Civil Rights Cases* (1883), *Plessy v. Ferguson* (1896), *Brown v. Board of Education* (1954), *University of California Regents v. Bakke* (1978). How would students assess the Court’s understanding of the amendment in each of these cases?
Andrew Johnson took the Presidential oath of office six days after the Confederate surrender at Appomattox had ended the Civil War. Johnson claimed that he would carry out Lincoln’s plan for Reconstruction. However, he actually went in a different direction. While he welcomed the end of slavery, Johnson saw blacks as inferior and believed that efforts to protect their rights would slow the rebuilding process. “White men alone must manage the South,” he once said. Johnson was unconcerned as states implemented Black Codes, laws restricting the rights of blacks. In contrast, Republicans in Congress hoped to severely punish the treason of the Confederate leaders and guarantee full civil and political rights for freedmen.

“Restoration,” not Reconstruction

Johnson, like Lincoln, maintained throughout the war that the Southern states had not actually seceded. The unlawful rebellion of certain people in the Southern states had deprived those states of the republican form of government guaranteed by the Constitution. For Johnson, the purpose of the war was to restore the Union and its republican form of government—not to protect the rights of blacks. In his first Annual Message to Congress, he said, “The Constitution is the work of ‘the people of the United States,’ and it should be as indestructible as the people.”

The Constitution contained no set of rules for states leaving the Union, nor for their re-entry. Which branch of the national government would be in charge of Reconstruction? As President, Johnson maintained that Congress had no role in what he called the “restoration” process. While Congress was not in session in 1865, Johnson planned to restore the Southern states to the Union based mainly on their ratification of the Thirteenth Amendment which ended slavery.

While Johnson had opposed emancipation early in his career, and had owned four slaves, he supported the Thirteenth Amendment because he saw the end of slavery as necessary to restore the Union. He also believed that ending the free labor of slavery would enable the middle and working classes to displace the rule of the South’s planter aristocracy, a group he hated. In his first message to Congress on December 4, 1865, he said, “The adoption of the [Thirteenth] Amendment reunites us beyond all power of disruption; it heals the wound that is still imperfectly closed: it removes slavery, the element which has so long perplexed and divided the country…” All of the former Confederate states were ready to reenter the Union by the end of the year.

Members of Congress believed the legislative branch should guide Reconstruction. Among the actions Congress took to assert its power were extension of the Freedmen’s Bureau, the Civil Rights Act of 1866, and several Reconstruction Acts. In the struggle between presidential authority and Congressional power, Johnson vetoed all of these bills. Congress quickly overrode his vetoes.

The Fourteenth Amendment

Congress hoped to make protection of blacks’
civil rights permanent through the Fourteenth Amendment to the Constitution. The Fourteenth Amendment was the first constitutional amendment to place limits on state governments. It defined citizenship and required that “no state shall make or enforce any law” that denied due process and equal protection of the laws. States that denied blacks the right to vote would have their representation in Congress reduced proportionally. Ex-Confederate leaders would not be able to hold office.

The Fourteenth Amendment was a significant revision to the constitutional principle of federalism. The amendment dramatically limited the powers of states in an unprecedented way. Seceded states would not be admitted back to the Union unless they ratified it.

Johnson objected to the Fourteenth Amendment for several reasons. He argued that it was improper to amend the Constitution when Southern states were not represented in Congress. In addition, he believed that each state should be able to determine who had the right to vote. There is no constitutional role for a President in the amendment process, but Johnson sent Congress a special message explaining his disapproval of the amendment. Over the next few months he advised Southern legislatures to reject it.

**The Conflict Intensifies**

Of the former Confederate states, only Tennessee ratified the Fourteenth Amendment. It was readmitted to the Union in 1866. When the Republicans gained strength in congressional elections that year, the relationship between President and Congress became even more strained. The new Congress added more conditions that the Southern states had to meet in order to rejoin the Union. Under federal supervision as military districts, states slowly fulfilled the requirements. By 1868, seven more states had been readmitted.

Johnson and Congress continually clashed over Reconstruction. Congress eventually impeached him, though the vote fell one short of the two-thirds majority required to remove him from office.

Johnson saw a limited role for the federal government. He accepted the end of slavery but sought to “restore” the South to the Union while preserving states’ powers. The Republicans hoped to “reconstruct” the South in a manner that would both punish the Confederates and assure Republican political power by protecting the rights of blacks. Their conflict set the stage for an impeachment trial of the President, and reflected social and legal tensions that continue into the twenty-first century.

**Critical Thinking Questions**

1. How was Johnson’s goal for Reconstruction different from that of Republicans in Congress?
2. According to Johnson, what was the purpose of the Civil War?
3. Why did Johnson support the Thirteenth Amendment? Why did he oppose the Fourteenth Amendment?
4. In what ways is our nation still dealing with the issues over which Johnson and Congress clashed?
**JOHNSON’S FIRST ANNUAL MESSAGE TO CONGRESS, DECEMBER 1865**

*Directions:* President Johnson explained his approach to Reconstruction (or “restoration,” as he preferred to call it) in his first Annual Message to Congress in December 1865. Fill in the following table to analyze excerpts from Johnson’s restoration plan. Use additional paper if needed.

<table>
<thead>
<tr>
<th>Topic</th>
<th>Excerpt</th>
<th>Put this in your own words</th>
<th>Do you believe Johnson interpreted the Constitution correctly? Explain.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Permanence of the Union and importance of the Constitution</td>
<td>The Union of the United States of America was intended by its authors to last as long as the States themselves shall last. “To form a more perfect Union,”... is the declared purpose of the Constitution. ...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Relationship of the States to the central government</td>
<td>[I]t is not one of the rights of any State government to renounce its own place in the Union or to nullify the laws of the Union.... The best security for the perpetual existence of the States is the “supreme authority” of the Constitution of the United States...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. The right to vote</td>
<td>[The Founders] left each State to decide for itself the conditions for the enjoyment of the elective franchise.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Topic</td>
<td>Excerpt</td>
<td>Put this in your own words</td>
<td>Do you believe Johnson interpreted the Constitution correctly? Explain.</td>
</tr>
<tr>
<td>-------</td>
<td>---------</td>
<td>----------------------------</td>
<td>-------------------------------------------------------------</td>
</tr>
<tr>
<td>4. Amending the Constitution to abolish slavery</td>
<td>The adoption of the amendment reunites us beyond all power of disruption; it heals the wound that is still imperfectly closed; it removes slavery, the element which has so long perplexed and divided the country; it makes of us once more a united people....</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Justice for the freedmen</td>
<td>Good faith requires the security of the freedmen in their liberty and their property, their right to labor, and their right to claim the just return of their labor.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Equal laws</td>
<td>Our Government springs from and was made for the people—not the people for the Government. ...Here there is no room for favored classes or monopolies; the principle of our Government is that of equal laws and freedom of industry.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
ACTIVITY  [ 20 minutes ]

A. Distribute Constitutional Connection: The President as Chief Diplomat on the following page and Appendix A: The Constitution.

B. Explain that while the phrase, “Chief Diplomat” never appears in the Constitution, several passages in Article II describing the duties of the President effectively give him or her this role. According to one constitutional scholar, the President is “the sole representative of the country when dealing with foreign powers.”

C. Have students work in small groups to define each phrase and explain how it pertains to the role of a diplomat—a person designated to represent his or her country in official negotiations with other countries.

D. After allowing a few minutes for students to discuss in their groups, conduct a large group discussion to fill in the blanks on the chart. Use an overhead to record responses.

To provide an introductory overview of the unit, show the six-minute thematic documentary, Advice and Consent: The President as Chief Diplomat, available at www.ArticleII.org/ChiefDiplomat.
### The President as Chief Diplomat

**Directions:** Define each phrase and explain how it reflects the President’s role of Chief Diplomat.

<table>
<thead>
<tr>
<th>Constitution Citation</th>
<th>Constitutional Phrase</th>
<th>Definition</th>
<th>How does this duty reflect the role of Chief Diplomat?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Article II, Section 1</td>
<td>executive power</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Article II, Section 2</td>
<td>advice and consent of the Senate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Article II, Section 2</td>
<td>make treaties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Article II, Section 2</td>
<td>nominate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Article II, Section 2</td>
<td>shall appoint ambassadors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Article II, Section 3</td>
<td>receive ambassadors</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The term “advice and consent” appears in the section of the US Constitution dealing with the president as the nation’s chief diplomat. By this term, the nation’s Founders meant that the president has the power to make binding treaties provided that he seek the advice of senators, then obtain the consent of two-thirds of the Senate. In theory this power-sharing arrangement is important to the balance of power between the executive and legislative branches. In practice it has worked well: Since the 1790s, the Senate has approved hundreds of treaties and rejected fewer than two dozen.

Americans tend to take “advice and consent” for granted, but it has been a source of debate throughout our history. At the Constitutional Convention of 1787, some Framers were leery of executive power because of the way King George III and his royal governors in the colonies had abused their position; most state constitutions drafted in the 1770s and 1780s, as well as the Articles of Confederation, kept executive power on a short leash. Other Framers, steeped in the writings of Montesquieu and Locke, were convinced that a strong executive increased the chances that government could advance the interests of the new nation effectively. Moreover, champions of the proposed Constitution—Federalists like Alexander Hamilton and James Madison—assumed that George Washington would be the new republic’s first president, so they advocated “energy in the executive.” Washington’s integrity went far to help the Framers agree on the power-sharing arrangement stipulated in Article II, Section 2, paragraph 2. Dividing power between the Executive and Legislative Branches was consistent with the best republican thought of the day. On the one hand, such separation of power would enable the president to take the initiative in negotiating treaties without acting like a tyrant. On the other hand, since treaties were laws, the Senate had a justifiable role in their approval.

It was one thing to write a constitution and debate its merits, quite another to launch the new government. Consider what happened on August 24, 1789, when Washington had been president only a few months. The new chief executive agreed to appear personally before the Senate to seek advice on how best to negotiate a treaty with an Indian tribe. The senators, intimidated by the presence of their newly elected president, handed the issue off to a committee for consideration at a later date. Flabbergasted, Washington exclaimed, “This defeats every purpose of me coming here!” Why, he’d “be damned” if he ever went to the Senate chamber again!
The encounter marked the first and last time any president would appear in person before the whole Senate to receive their advice before negotiating a treaty.

Washington set another important precedent with regard to treaties. When he issued the Neutrality Proclamation of 1793, he raised the question of whether it was constitutional for a president to unilaterally ignore an existing treaty. In 1778, during the War for Independence, the US had negotiated the Treaty of Alliance with France, which helped the thirteen colonies win their independence. But in 1793, Washington did not want the US to take sides in the world war then being waged between the British and French. So he deftly drafted the Neutrality Proclamation to enable America to have its cake and eat it too. While not technically suspending the earlier treaty, Washington’s proclamation nevertheless kept the US on the sidelines of the European conflict.

The Washington administration also experienced a dubious first—the Senate’s refusal to give its consent to a treaty. The year was 1794, and the issue was an agreement between the US government and the Wabash and Illinois Indians. The first time the Senate outright rejected a truly international treaty that had been negotiated between the Executive Branch and Colombia occurred in 1825 over the slave trade.

Many times the Senate and president were able to work together to find ingenious solutions to international problems. Purchasing Louisiana from the French in 1803 was a thorny issue because, as President Thomas Jefferson put it in a letter, “The Constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union.” Faced with a constitutional conundrum, Jefferson got his allies in the Senate to consult Article IV, Section III, regarding the regulation of “the Territory or other Property” of the US. They passed a clever piece of legislation that allowed Jefferson to accept the Louisiana Purchase as a treaty.

If George Washington was the first president to ignore an existing treaty, Abraham Lincoln was the first to take the next step and unilaterally threaten to terminate a treaty with the consent of the Senate. The Rush-Bagot Treaty of 1817 had demilitarized the border between the US and Canada. But during the Civil War, when Confederates used Canadian soil as a staging ground to attack the US, Lincoln served notice to the British that the US would withdraw from the agreement. Congress issued a joint resolution supporting the commander in chief’s decision. The South’s collapse allowed Lincoln to withdraw the notice of termination, but an important precedent had been set nonetheless.

The most famous instance of Senate rejection of a treaty took place in the aftermath of World War I. President Woodrow Wilson’s handling of the Fourteen Points and Treaty of Versailles aroused fierce opposition in the Senate. As a result of the 1918 midterm elections, power in Congress transferred from Democrats to Republicans, putting Wilson’s foe, Senator Henry Cabot Lodge, as the chair of the Senate Foreign Relations Committee. Despite the shift in power, Wilson ignored Lodge’s reservations to the treaty. Wilson further slighted the Senate by refusing to include senators in the negotiating party sent to Paris. Commenting on senators’ interference to his plans, Wilson sneered that they were “contemptible, narrow, selfish, poor little minds....”

To abide by the Constitution’s requirement of power-sharing through advice and consent, Wilson would have to respond to the Senate Foreign Relations Committee’s reservations...
to the Treaty of Versailles. He refused to do so. Indeed, to skirt the Senate’s objections, the president appealed directly to public opinion to support the treaty. He embarked on an ambitious cross-country tour of the nation in October 1919, but a series of strokes led to his collapse. He returned to Washington, where he would spend the rest of his presidency bedridden. In November, Senator Lodge sent the treaty to the Senate floor with the same reservations as before. There were no amendments. On November 19, 1919, the Senate rejected Wilson’s treaty, marking the first time in US history that the Senate rejected a peace treaty.

The US Supreme Court has heard several cases that have shed further light on the president as chief diplomat needing the advice and consent of the Senate. In the landmark case of *Haver v. Yanker* (1869), the high court upheld the Senate’s right to amend a treaty negotiated by the president. Another landmark case, *Goldwater v. Carter* (1979), shielded the president from blatant political pressure and reasserted the authority of the White House to conduct the nation’s foreign policy. In a similar spirit, the Supreme Court dismissed *Kucinich v. Bush* (2002) on the ground that President George W. Bush had the authority to rescind the Anti-Ballistic Missile Treaty over the objections of a number of congressmen.

If history is prologue, there will be many future controversies involving the separation of powers in general, and the meaning of “advice and consent” in particular.

*Gleaves Whitney is Director of the Hauenstein Center for Presidential Studies at Grand Valley State University. He is the author or editor of fourteen books, four of which are on the American presidency.*
Overview

In his every action, President George Washington recognized the significance of the precedents he set. His efforts to implement constitutional provisions in order to steer the United States through an early foreign policy challenge resulted in Jay’s Treaty—a pact vilified in its own time, but ultimately vital in keeping the United States out of a war with Britain.

Objectives

Students will:

- Understand the issues at stake in Jay’s Treaty.
- Trace President Washington’s application of constitutional principles to Jay’s Treaty.
- Evaluate the significance of Washington’s actions in establishing precedent in treaty making.

Materials

- Handout A: George Washington and Jay’s Treaty
- Handout B: Setting the Scene
- Handout C: George Washington’s Message to the House
- Handout D: Vocabulary and Context Questions

Critical Engagement Question

How did the actions of President George Washington with respect to Jay’s Treaty of 1795 define the role of the President as Chief Diplomat?

Background/Homework

Have students read Handout A: George Washington and Jay’s Treaty and answer the questions.

Warm Up [5 minutes]

A. Ask the class to imagine it is July of 1795 and they will be hearing “news reports” from around the nation. Give one slip each from Handout B: Setting the Scene to students who are strong readers.

B. Have students read their slips in turn; encourage them to read dramatically.
Activity [30 minutes]


B. Give students 10-15 minutes to read the document and answer the questions on Handout D.

C. As a large group, go over the vocabulary and context questions, and clarify any questions students have.

D. Using a transparency of Handout C, ask individual students to read the message aloud one paragraph at a time. After each paragraph, ask students what sections of the Constitution or what constitutional principles Washington refers to in his message. Have students put them in their own words in the margins of their paper. See the Answer Key for suggested responses.

Wrap-Up [15 minutes]

A. Ask students if they think Washington was correct to have the Senate debate Jay’s Treaty in secret, and to refuse the House’s request for documentation. Conduct a large group discussion to answer the questions:
   - Was the secret deliberation, as some charged at the time, contradictory to the principle of republican government?
   - Was the secret debate necessary for national security?
   - What kinds of information does the President typically keep secret today—from the other branches of government? from the American people?

B. Show the five-minute thematic documentary Advice and Consent: The President as Chief Diplomat found at www.ArticleII.org/ChiefDiplomat.

Homework

A. Have students develop a fictional one-act play in which they compose a dialogue that might have taken place between Washington and the Speaker of the House.

B. Have students read Washington’s entire message to Congress, and write a paragraph summarizing his justifications for secrecy. The document can be found at: http://www.avalon.law.yale.edu/18th_century/gw003.asp
George Washington knew that he set an example for future Presidents with every act. His main goal was the development of a strong national government that would protect the rights of its people and earn international respect.

The 1793 war between Britain and France created an urgent problem for the United States because of the busy trade system between the US and Caribbean colonies of both Britain and France. John Jay had helped negotiate the treaty ending the American Revolution. Washington called on him again in 1794 to draft a new treaty to avoid further conflict with the British.

**John Jay’s Diplomacy**

Jay, the nation’s first Chief Justice, and Washington must have considered whether it was constitutional for Jay to accept the diplomatic position. While the Constitution prohibits members of Congress from accepting other federal offices, it includes no such prohibition on Justices of the Supreme Court. Jay accepted the post and Washington immediately asked the Senate to confirm the appointment. Some Senators thought such a foreign appointment was unwise because it would harm the Constitution’s principle of separation of powers if judges thought they could gain high-paid positions dependent on the executive branch. However, after two days of debate, the Senate approved Washington’s choice.

Soon after, another constitutional question arose. Jay met with Secretary of the Treasury Alexander Hamilton and several Senators to define the goals of Jay’s mission. They discussed whether “advice and consent of the Senate” meant that the President needed to submit the specific details of Jay’s instructions to the Senate. They all agreed that such pre-clearance was unnecessary.

When Jay arrived in London in June, 1794, his bargaining position was weak, but he did achieve some of his goals. The treaty itself provided that the British would evacuate the Great Lakes forts that they had continued to occupy after 1783, and would pay reparations for having seized some US ships.

However, the treaty left unresolved some of the most important American concerns, including recognition of America’s neutral trading rights, and the need for a formal commitment to stop the impressment of American sailors (seizing them and forcing them to serve for the British).

Jay knew that the final treaty would stir much controversy at home. However, as he said in a letter, “Further concessions on the part of Great Britain cannot … be attained.” It was the best he could do.

**Controversy Regarding the Treaty**

Washington required the Senate to debate the treaty in secret. Republican newspapers attacked such secrecy, maintaining that it contradicted representative government. However, the Senate ratified the treaty, with the exception of one article in 1795.

Soon newspapers published the entire treaty, and public protest against it swept the country for the next six weeks. Jay commented that he could have traveled across the whole country by the light of his burning effigies.
In July 1795, Washington explained his reasoning in his Letter to the Boston Citizens, “Without a predilection [preference] for my own judgment, I have weighed with attention every argument, which has at any time been brought into view. But the Constitution is the guide, which I never will abandon. It has assigned to the President the power of making treaties, with the advice and consent of the Senate. It was doubtless supposed that these two branches of government would combine, without passion, (and with the best means of information), those facts and principles upon which the success of our foreign relations will always depend: that they ought not to substitute for their own conviction the opinions of others; or to scorn expect truth thro’ any channel but that of a temperate and well-informed investigation.”

In mid-August 1795, Washington signed Jay’s Treaty. He reasoned that it was the best he could get, and that rejection would make it appear that the US favored France—Britain’s enemy.

Since Congress has the power of the purse, costs as a result of the Treaty would have to be approved by the House of Representatives. Treaty opponents in the House demanded that Washington produce all papers relevant to the Treaty, but he refused since treaty approval belonged solely to the Senate. He thereby set an important precedent of executive privilege (though the term was not used at the time). The House finally voted in 1796 to fund the Treaty.

**The Legacy of Jay’s Treaty**

While Jay’s Treaty did not accomplish some of its important objectives, many of its results were noteworthy. Its most important goal of avoiding war with Britain was met at a time when the US probably could not have won. It provided a way to settle the boundary disputes and evacuate British troops from the Great Lakes forts, encouraging westward movement and an economic boom.

The development of Jay’s Treaty also helped establish the President’s role as Chief Diplomat. Washington set several important precedents, namely:

- The President determines who is best suited to conduct foreign negotiations, subject to the Senate’s approval.
- The President and his delegates determine the outlines of treaty objectives without consulting the Senate in advance.
- The Constitution does not require that the President justify his treaty decisions before the House of Representatives, which must decide whether to provide needed funds.

**Critical Thinking Questions**

1. Why did Washington consider whether it was constitutional for Jay to negotiate a treaty with the British?
2. Why did Jay know that the treaty would stir much controversy at home?
3. Why do you think Washington required the Senate to debate the treaty in secret? Was this decision correct?
4. Why do you think Washington approved the treaty even though it failed in some significant respects?
Good afternoon. In our lead story today a noisy, angry mob threw stones at the home of a Pennsylvania Senator. No serious injuries were reported, but the situation remains dangerous.

The Kentucky state legislature demanded an amendment to the US Constitution today. The amendment they asked for would permit the recall of US Senators.

All across the county today, US Senators were burned in effigy, and physically attacked in a number of public places.

The Secretary of the Treasury met with a crowd in New York City. He tried to address the group, but the Secretary could no longer go on after being hit in the head by a rock thrown at him.

A petition to George Washington called the “Memorial to the Citizens of Pennsylvania” appeared on July 28 of this year in the American Daily Advertiser. It read, in part: “The treaty is objected to first, because it does not provide a fair and effectual settlement of the differences that exist between the US and Great Britain ... by refusing to ratify the treaty, you will, according to [our] best information and judgment, at once evince an exalted attachment to the principles of the Constitution of the United States and an undiminished zeal to advance the prosperity and happiness of your constituents.”
GEORGE WASHINGTON’S MESSAGE TO THE HOUSE

**Directions:** Read the following document and answer the questions on Handout D: Vocabulary and Context Questions. Then underline and rewrite in your own words the constitutional principles to which President Washington refers.

**UNITED STATES, March 30, 1796**
**To the House of Representatives of the United States:**

The course which the debate has taken on the resolution of the House leads to some observations on the mode of making treaties under the Constitution of the United States.

Having been a member of the General Convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion on this subject ... that the power of making treaties is exclusively vested in the President, by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur; and that every treaty so made and promulgated thenceforward became the law of the land.

It is thus that the treaty-making power has been understood by foreign nations, and in all the treaties made with them we have declared and they have believed that, when ratified by the President, with the advice and consent of the Senate, they became obligatory....

As, therefore, it is perfectly clear to my understanding that the assent of the House of Representatives is not necessary to the validity of a treaty ... and as it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office, under all the circumstances of this case, forbids a compliance with your request.

Geo WASHINGTON.
Vocabulary and Context Questions

Directions: Using a dictionary and/or context clues, define each word. Then answer the questions that follow.

**Vocabulary**

1. **utmost:** ____________________________________________

2. **relative:** __________________________________________

3. **mode:** ____________________________________________

4. **exclusively:** ________________________________________

5. **vested:** __________________________________________

6. **concur:** __________________________________________

7. **promulgated:** ______________________________________

8. **obligatory:** ________________________________________

9. **validity:** __________________________________________

**Context Questions**

1. Who wrote this document? ______________________________________

2. When was this document written? ____________________________

3. Who is the audience for this document? ________________________

4. What is the purpose of this document? _________________________
Overview

As President Woodrow Wilson negotiated with foreign leaders to write the Treaty of Versailles, he was forced to make extreme concessions from his peace plan, the Fourteen Points. He remained confident in the League of Nations—one of his Fourteen Points—to ameliorate remaining injustices in the Treaty. When he sought the Senate’s consent to the treaty, he found some members of that body so opposed to joining the League of Nations that the Treaty was rejected by votes on three occasions. Wilson neither sought nor accepted the Senate’s advice on the Treaty, and for the first time in American history, the Senate refused to ratify a peace treaty negotiated by the President.

Objectives

Students will:

- Understand how the Constitution’s separation of powers influenced writing and debate on the Treaty of Versailles.
- Analyze constitutional principles in primary source documents.
- Evaluate political cartoons about the Treaty of Versailles ratification debate.
- Assess Wilson’s approach to “advice and consent of the Senate.”

Critical Engagement Question

What impact did President Woodrow Wilson’s approach to “advice and consent of the Senate” have on the fate of the Treaty of Versailles?

Materials

- Handout A: Woodrow Wilson, the Great War, and the Fourteen Points
- Handout B: Setting the Scene
- Handout C: Political Cartoon Analysis
- Handout D: Three Views on America’s Role

Web Resource: Political Cartoons and Map at www.ArticleII.org/ChiefDiplomat/Units

Background/Homework

Have students read Handout A: Woodrow Wilson, the Great War, and the Fourteen Points and answer the questions.
**Warm Up [ 5 minutes ]**

Assign three good readers to act out the scene on Handout B: Setting the Scene for the class. Encourage students to read dramatically.

**Activity [ 35 minutes ]**

A. Using available technology and/or by printing hard copies, project or distribute the political cartoon “Seein’ Things” found at www.ArticleII.org/ChiefDiplomat/Units.

B. Distribute Handout C: Political Cartoon Analysis. Have students analyze as a large group the political cartoon on their own paper using the questions on the Handout and any other ideas students have. See the Answer Key for suggested responses.

C. Follow the same process for the cartoons “Interrupting the Ceremony” and “The Lamb from the Slaughter.”

**Wrap-Up [ 15 minutes ]**

A. Using available technology and/or by printing hard copies, project or distribute the map of Wilson’s speaking tour through the United States.

B. Remind students what a departure from tradition was Wilson’s 8,000-mile, twenty-two day attempt to increase popular support for the Treaty of Versailles.

C. Ask the class: How did Wilson’s actions shape the President’s role as Chief Diplomat?

**Homework**

A. Have students complete Handout D: Three Views on America’s Role.

B. Have students write two to three paragraphs in response to the question: With respect to his role as chief diplomat and the Treaty of Versailles, what was Wilson’s greatest achievement? What was his greatest failure?

**Extension**

The League of Nations was formed, and the world’s leaders—minus the United States—attempted with no success to settle international crises. In 1945, at the end of World War II, the United States took the lead in establishing the United Nations. Have students research the history of the United Nations and assess that body in terms of its effectiveness as well as what Wilson might have said about it.
Woodrow Wilson commented just before his inauguration in 1913, “It would be an irony of fate if my administration had to deal chiefly with foreign affairs.” President Wilson begged Americans to be neutral at the beginning of World War I in 1914. When the US entered the conflict in 1917, it was partly because of Wilson’s desire to direct the peace treaty. His idealistic post-war plan was called the Fourteen Points. Wilson hoped it would make World War I “the war to end all wars,” because it included a world forum that came to be called the League of Nations.

Compromise at the Conference

Even though the voters had elected Republicans to majorities in both Houses of Congress in November 1918, Wilson (a Democrat) believed that the American people favored the Fourteen Points. Wilson did not receive the “advice …of the Senate” on the plan because he failed to consult Senators before the peace conference, and invited no Republican Senators to accompany him to France.

Wilson arrived in France for treaty negotiations in January 1919, becoming the first President to engage personally in overseas diplomacy. Wilson was greeted by crowds as a hero. He stressed the unselfish motivation of the US to defend “the rights of mankind.” Once in the conference hall, though, he was treated with much less respect. He faced delegates from England and France, who wanted revenge against Germany. Both countries pushed Wilson to compromise on elements of the Fourteen Points. Wilson accepted the compromises, but insisted on the creation of the League of Nations. He trusted the League of Nations to end wars forever.

Henry Cabot Lodge

The Senate’s Republican leader was Henry Cabot Lodge of Massachusetts. Lodge’s relationship with Wilson was bitter. Lodge told the President that at least thirty-nine of ninety-six Senators would not accept the League of Nations. The Senators’ main concern was that the League might require the US to commit troops to some foreign conflict without action by the US Congress. (The Constitution gives Congress the power to declare war.) Wilson again rejected an opportunity to confer with Republican Senators.

The President’s Appeal to the People

In another departure from tradition, Wilson delivered the final bulky treaty to the Senate in person, urging rapid approval. However, Lodge and the Treaty’s other opponents knew that with time, popular support for the League was fading. When Lodge held lengthy hearings, delaying the Senate vote, Wilson appealed to the people themselves.

In spite of health problems, including atherosclerosis (hardening of the arteries), terrible headaches, and a weakened heart, Wilson embarked on a grueling speaking tour to educate the people. In September 1919, he left Washington, traveling 8,000 miles in twenty-two days. His health grew worse until he collapsed in Pueblo, Colorado, on September 25. As his train raced back toward Washington, Wilson suffered
a severe stroke, causing paralysis from which he never fully recovered. Some historians believe the President’s direct appeal to the people had increased support for the Treaty. The people’s support for the Treaty did not matter in the end, however, because they did not have the constitutional power to ratify it. Wilson was unable to carry on. His wife and his doctor isolated the desperately ill President in order to protect him from further stress.

The End of the Treaty
The Treaty was now in the Senate’s hands. In November of 1919, the Senate adopted Lodge’s “Reservations”—conditions under which they would vote for the Treaty of Versailles. The “Reservationists” would support the treaty if it were modified to allow Congress to veto any League commitment of the US.

Never known for his adaptability, Wilson became even more stubborn after his strokes. When he read the Lodge document, Wilson said, “That cuts the very heart out of the Treaty; …it would humiliate the United States....” Wilson ordered Senate Democrats to vote against the treaty if it included the Lodge reservations. There was also a small group of “Irreconcilables,” who intended to vote against the Treaty in any form.

European leaders had accepted the Treaty with its League of Nations in June 1919, but the US Senate would not. On November 19, the Senate rejected the peace treaty—voting against it both with and without Lodge’s reservations.

Though the Treaty seemed to be dead, its supporters kept working. In February Wilson still refused to accept the reservations, even though Britain and France were willing to do so. He stated, “Either we should enter the League fearlessly, accepting with responsibility and not fear the role of leadership which we now enjoy, …or we should retire as gracefully as possible from the great concert of powers by which the world was saved.” In March, the Senate rejected the Treaty again.

Wilson consistently refused the advice of the Senate, and the Senate consistently refused to consent. Wilson asked the voters to make the November 1920 election a “solemn referendum” on the Treaty by voting for the Democratic candidate. However, the Republican candidate won by a huge margin. Americans were unwilling to take the world leadership role for which Wilson had worked so hard.

Comprehension and Critical thinking questions
1. What did Wilson hope to achieve with the Treaty of Versailles and League of Nations?
2. What was the main concern of Lodge and other Senators regarding the Treaty?
3. What historic “firsts” occurred during the development of the Treaty of Versailles?
4. What clues were there that the Treaty of Versailles might fail?
5. Do you believe Wilson acted prudently in his approach to “advice and consent of the Senate”? Why?
Narrator: The visitor arrived in the President’s sickroom on November 7, 1919, and was shocked at how weak the President had become following a stroke six weeks earlier. Though his paralyzed body was failing and his voice was weak, the President’s eyes were bright and his mind sharp. The visitor was Wilson’s friend, Gilbert Hitchcock, the leader of the Democratic Party in the US Senate, and he was trying to save the Treaty of Versailles by convincing President Wilson to compromise.

Senator Hitchcock: (speaking softly but earnestly) Mr. President, it is not possible for the Democrats to muster a majority, let alone a two-thirds vote, to support Senate ratification of the Treaty unless you agree to the reservations proposed by Republican Senator Henry Cabot Lodge.

President Wilson: (groaning as he tries to sit up in bed) It is possible! It IS possible!

Hitchcock: (pleading) Mr. President, it might be wise to compromise...

Wilson: (interrupting, with venom in his voice, and raising himself up on one elbow) Let Lodge compromise!

Hitchcock: (patiently trying again) Well, of course,...but we might hold out the olive branch.

Wilson: (emphatically) Let Lodge hold out the olive branch! I have no moral right to accept any change in a paper I have already signed. (Pause) Edith, take this down. (dictates) “I hope all true friends of the Treaty will refuse to support the Lodge reservations.” Please convey this message to all the Democratic Senators.

Narrator: The patient’s wife, Edith Wilson, and his doctor, alarmed at how agitated the President had become, both escorted Hitchcock out of the room. The Senator’s advice was rejected. Hitchcock read the letter to the Democratic caucus the next day, and continued the fight in the Senate for unconditional ratification of the Treaty of Versailles.
Political Cartoon Analysis

Directions: Answer the questions that follow for each cartoon.

1. "Seein' Things" (Brooklyn Eagle, 1919)

2. Interrupting the Ceremony

POLITICAL CARTOON ANALYSIS (CONT.)

Directions: Answer the questions for each cartoon.

1. When was this cartoon drawn?

2. Describe what is literally happening in the cartoon in one or two sentences.

3. Describe what is symbolically happening in the cartoon in one or two sentences.

4. What is the cartoonist’s point of view?

5. Do you find this cartoon effective and/or persuasive? Explain.

6. How does this cartoon illustrate the constitutional principles of separation of powers and/or checks and balances?
**Three Views on America’s Role**

**Directions:** Read the excerpts below and think about the different views represented. Then answer the questions that follow.

An evident principle runs through the whole program I have outlined. It is the principle of justice to all peoples and nationalities, and their right to live on equal terms of liberty and safety with one another, whether they be strong or weak. Unless this principle be made its foundation no part of the structure of international justice can stand. ...The moral climax of this, the culminating and final war for human liberty, has come...

—Woodrow Wilson, 1918 Fourteen Points speech to Congress

We [should] not have our politics distracted and embittered by the dissensions of other lands. We [should] not have our country’s vigor exhausted, or her moral force abated, by everlasting meddling and muddling in every quarrel, great and small, which afflicts the world....

—Henry Cabot Lodge, 1919 speech explaining his objections to the League of Nations

America has arisen to a position where she is respected and admired by the entire world. She did it by minding her own business... the European and American systems do not agree.

—William Borah, 1919 speech in Brooklyn opposing the League of Nations

1. On what important ideas do all speakers agree?

2. How do they differ in their interpretations of the best ways to achieve these principles?
Overview

President Jimmy Carter’s approach to foreign affairs called for correcting what he saw as injustices, and repudiating American colonialism. Though both negative public opinion and Senate objection originally stood in his way, Carter was able to achieve the two-thirds majority necessary for Senate ratification of the Panama Canal Treaties of 1977. His methodical and wide-ranging approach to “advice and consent of the Senate” was a key reason for the smooth transfer of the Panama Canal Zone to Panama.

Objectives

Students will:

- Understand the issues at stake between the United States and Panama in the Panama Canal Treaties.
- Trace President Carter’s approach to the questions and controversies that resulted from Panama Canal Treaties.
- Analyze the roles of the executive and legislative branches in the treaty-making process.
- Evaluate the effectiveness of Carter’s efforts.

Materials

- Handout A: Jimmy Carter and the Panama Canal Treaty

Critical Engagement Question

How did President Jimmy Carter achieve Senate ratification of the unpopular treaties transferring the Panama Canal Zone from the United States back to Panama?

Background/Homework

Have students read Handout A: Jimmy Carter and the Panama Canal Treaty and answer the questions.

Warm Up [15 minutes]

A. Divide the class into groups of five for a mock Senate debate. Within each group should be two “Senators Opposed,” two “Senators In Favor,” and one “President.”

B. Instruct each group to hold their own mock “Senate debate” on the Panama Canal Treaties of 1977. The “President” in each group should not participate in the debate, but listens and takes notes concerning any changes that may need to be made in the treaty. Allow the debates to proceed for about 10 minutes.
**Activity [25 minutes]**

A. Reconvene the class and have students meet in 3 new groups: Senate Treaty Supporters, Senate Treaty Opponents, and Presidents. Give students a few minutes to share ideas that came out of their debates. Remind the Presidents group that any change in a treaty that comes from the Senate is subject to approval by the foreign country’s government.

B. Ask for volunteers to participate in a “fishbowl debate,” allowing students to help one another in making the best arguments they can for and against the treaty.

C. Ask the “Senate” to answer this question: “Under what conditions would you vote for the treaty?”

D. Ask the “Presidents” group to summarize the advice they have compiled by listening to the Senate. Then ask: How can you use the Senate’s debate to:
   a. address Senators’ concerns?
   b. conduct future conversations with Torrijos?

**Wrap-Up [10 minutes]**

A. Call for a vote on the Treaty. Treaty ratification requires a 2/3 majority.

B. As a large group, discuss how the roles of the executive and legislative branches in the treaty-making process.

C. Discuss the fact that even though a treaty must be approved by the Senate, history holds the President responsible for the outcome of treaty negotiations. Why is that?

**Homework**

Have students create a T-chart to respond to the questions: What did President Jimmy Carter do effectively in the “advice and consent” part of the Panama Treaty process? What aspects of his approach, if any, needed improvement?

**The Issues Endure**

Have students complete the “Rest of the Story” activity at www.ArticleII.org/ChiefDiplomat/Units.
A as one United States Senator said about the Panama Canal, the Americans had “stolen it fair and square.”

In 1903, the US Secretary of State and Panama’s ambassador to the US signed a treaty giving the US control of a strip of land across the brand-new Republic of Panama. The US would have complete authority over the Canal Zone “in perpetuity.” In exchange, the US would make annual payments to Panama.

Panama’s ambassador, a French citizen, was not authorized to sign treaties on behalf of Panama. No Panamanian saw the treaty in advance. Panama’s government, which had approved US construction of a canal, objected bitterly to this permanent intrusion on their sovereignty.

In the largest engineering feat of our history up to that point, Americans directed construction of the Panama Canal from 1904-1914.

THE US AND PANAMA RELATIONSHIP

The Canal Zone was a US territory, and as such had its own post offices, courts, and schools. The flags of each nation—where and how they were flown—became a symbol for the disagreement over who owned the Zone.

By the 1960s, tensions between the Americans and Panamanians were high. Zone authorities decreed neither flag would be flown in Canal Zone schools. On January 9, 1964, a conflict over the flags of each nation erupted into riots. American-owned businesses were attacked. When the riots were over, twenty-one Panamanians and four US soldiers had been killed. The next day, Panama broke off diplomatic relations with the US until a new treaty could be worked on.

Because of political turmoil in both countries, negotiations for a new treaty did not begin until 1976.

CARTER AS CHIEF DIPLOMAT

Democrat Jimmy Carter took office in 1976. He believed strongly that America’s foreign affairs should reflect a new commitment to preserve human rights everywhere, correct injustices, and renounce American colonialism. He wanted to cure the “diplomatic cancer which was poisoning our relations with Panama.” He began his Presidency prepared to act on these convictions.

Carter’s goal was to negotiate a treaty with Panama that he believed was just. Earning Panama’s goodwill was important to him. Carter also believed that America’s allies in Latin America would be watching closely. They would observe how the US treated Panama, a neighboring, defenseless nation.

Carter faced opposition from Congress and the public. Public opinion was that the US should keep the canal that had been planned, built, and paid for by America. Despite this opposition, the President believed that his best chance for a fair treaty was to address the issue quickly. On September 7, 1977, Carter and Panamanian leader Omar Torrijos signed two treaties, known as the Torrijos-Carter Treaties.

The first, the Panama Canal Treaty, stated that the Canal Zone would be turned over to Panama in 1979. A gradual transfer of the operation of the canal itself would be complete by December 31, 1999. The second Treaty, commonly known as the Neutrality Treaty, gave the
United States the right to defend the canal forever, but affirmed Panama’s control of its internal affairs. Panamanian voters approved the Carter-Torrijos treaties in a special vote.

**Weighing the Treaties**

In the US, however, it was more complicated. Carter had to address the doubts of the American people, as well as opposition in the US Senate. Many treaty opponents saw control of the canal as a symbol of American strength. The issue was “patriotism vs. surrender.” There were also concerns about Panama’s ability to run the canal, given its unstable government. Torrijos was a military dictator. Finally, the economic and strategic impact that giving up the Canal would have on the US was unknown.

Treaty supporters argued that control of the Canal was less crucial to America’s foreign policy interests than in the past. Further, the US could not effectively defend the canal without the cooperation of the Panamanians. Treaty supporters also argued that Panama had the best possible motivation to operate the canal effectively. A State Department official said, “It is their only natural resource, and they will take care of it.”

**Carter’s Campaign**

Carter engaged in a massive public relations campaign to inform the American people about the Treaties’ benefits. He sent representatives across the country to make more than 1500 appearances.

Thirty-eight Senators—more than enough to prevent US ratification —expressed opposition to the Treaties. To win converts in the Senate, Carter’s team kept a binder with notes of conversations, rumors, and questions from Senators regarding the treaty. They quickly followed up on each entry to persuade as many Senators as they could. Carter also encouraged Senators to visit Panama and talk with Torrijos.

Throughout the Senate debate, which was the longest since defeat of the Treaty of Versailles, Carter personally tracked the Senate’s progress. He spoke daily with Senators and with Torrijos, answering questions and agreeing to various Senate modifications to save the treaties.

The Neutrality Treaty was approved on March 16, and the Panama Canal Treaty on April 18, 1978 with one vote to spare: sixty-eight for, thirty-two against. Through personal attention, patience, and his willingness to make adjustments in the agreement, Carter had built support for it.

In 1999, the gradual shift of authority for the canal was complete, and former President Carter led the US delegation in the ceremony marking the handoff. President Jimmy Carter considers the Panama Treaties among the most important achievements of his presidency.

---

**Critical thinking questions**

1. What were Carter’s goals for foreign affairs?
2. What were the reasons for Panamanian opposition to US ownership of the Panama Canal Zone, and why were these reasons important to Carter?
3. How did President Carter influence public opinion?
4. How did President Carter get the advice of the Senate?
5. How would you assess his approach to “advice and consent of the Senate”?
Activity [20 minutes]

A. Distribute Constitutional Connection: Electing the President on the following page.

B. Have students read the excerpts from Article II and Federalist No. 68.

C. Go over the questions as a large group, and then conduct a large group discussion to answer these questions:
   - Look at the map on the Handout. How is the number of electoral votes from each state determined?
   - How does the Electoral College reflect the nature of the United States, which James Madison described as “partly national” and “partly federal”?
   - Today, all states choose electors by popular vote, though the people vote for electors who are pledged to vote for a certain candidate. How does this process differ from the one imagined by the Founders?
   - If the Electoral College were eliminated and the President were elected by a direct popular election, how, if at all, would each of the following change?
     - Campaigns
     - Candidates
     - Outcomes
     - The nature of the Union

To provide an introductory overview of the unit, show the five-minute thematic documentary, The Electors Shall Meet: Electing the President, available at www.ArticleII.org/Electing.
Directions: Read the following document excerpts and answer the questions that follow.

**Article II, Section 1 (1787)**

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

The electors shall meet in their respective states, and vote by ballot for two persons...

**Federalist No. 68 (1788)**

[T]he sense of the people should operate in the choice of the person to whom so important a trust [the President] was to be confided....

A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.

And as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferments, which might be communicated from them to the people, than if they were all to be convened at one time, in one place....

Talents for low intrigue, and the little arts of popularity, may alone suffice to elevate a man to the first honors in a single State; but it will require other talents, and a different kind of merit, to establish him in the esteem and confidence of the whole Union, or of so considerable a portion of it as would be necessary to make him a successful candidate for the distinguished office of President of the United States.

---

**Questions**

1. How are electors selected?
2. Where do the electors meet?
3. What are three reasons the Founders decided on this method for selecting the President?
4. Do any/all of these reasons still apply today? Explain.

---

**Number of Electoral Votes by State**
Selecting the President
by Marc Landy, Ph.D.

On March 2, 1797, President George Washington wrote to his old friend and fellow revolutionary soldier Henry Knox,

> As early in next week as I can make arrangements for it, I shall commence my journey for Mount Vernon. - Tomorrow, at dinner, I shall, as a servant of the public, take my leave of the President Elect, - of the foreign characters, heads of Departments, & c. - And the day following, with pleasure, I shall witness the inauguration of my Successor to the Chair of government.

Washington was always as good as his word. Two days later, the world witnessed something truly new—an elected chief executive voluntarily retiring from power and peacefully handing over the reigns of government to his duly elected successor. And so it has been ever since.

The capacity of the United States to escape the violence and instability that have so often accompanied transitions of executive power in other countries has repeatedly been tested. The presidential elections of 1800, 1824, 1864, 1876, and 2000 provided the most severe and harrowing challenges to this unbroken record of success.

At the Constitutional Convention, there was heated debate on how to select the executive. Some wanted Congress to appoint the president. Others wanted the state legislatures to do it. Still others wanted the president to be directly elected through a popular vote. James Wilson of Pennsylvania was the first to propose the system we now call the Electoral College.

Each state would appoint a number of presidential electors equal to their representation in Congress. The winner would become President, provided he had a majority of electoral votes. The runner up would become Vice President. If no candidate won a majority in the Electoral College, the House of Representatives would choose the President from among the top five contenders.

This design of the Electoral College worked smoothly through three presidential elections. Washington’s decision to leave office after two terms was no doubt eased by his confidence that his own Vice President, John Adams, would succeed him. But in 1800, Adams, a Federalist, was defeated by his partisan enemy, Thomas Jefferson, a Republican. The Federalists were honestly unsure about the wisdom of allowing Thomas Jefferson to become president, and a quirk in the wording of Article II of the Constitution gave them the opportunity to stop him. Article II provided that each presidential elector cast votes for two persons for president, one of whom could not be
from the elector’s own state. This provision was intended to force the electors to look beyond their own state to find someone they considered to have the breadth of vision and talent necessary to be President.

However, the Framers had failed to anticipate the influence of political party loyalty on the electors. In 1800, the Republicans slated Thomas Jefferson for president and Aaron Burr for Vice President. But party leaders failed to instruct at least one elector to vote for Jefferson and not Burr. Thus both received exactly the same number of votes. Therefore the choice between them was left to the Federalist electors who detested them both. Burr refused to urge the Federalists to vote for Jefferson. Only the intervention of the most influential of the Federalists, Alexander Hamilton, enabled Jefferson to win. Hamilton told his political allies that they faced a choice between a scrupulous enemy, Jefferson and an unscrupulous one, Burr. To save the Constitution, they had to support the man who could best be counted on to act honorably, Jefferson.

To save the Constitution, the Federalists had to support the man who could best be counted on to act honorably, Jefferson.

The Constitution provides that if no presidential candidate receives a majority of the electoral vote, the House of Representatives will choose the president from among the three candidates with the most electoral votes. In 1824, for the first and only time, none of the candidates obtained an electoral vote majority. Andrew Jackson had a substantial lead in electoral votes, but the House of Representatives elected John Quincy Adams. Jackson’s supporters were infuriated. They believed that Adams won because he had promised appoint the Speaker of the House, Henry Clay, to the post of Secretary of State. But Jackson did not attempt to coerce the House into changing its mind. Instead, he made the alleged “corrupt bargain” between Adams and Clay a campaign issue in his successful 1828 presidential campaign.

1864 was the only time that serious consideration was given to postponing a presidential election. As late as the summer of that year, the Civil War was going badly for the Union. Abraham Lincoln greatly feared he would fail to be re-elected and his opponent, George McClellan, would sue for peace. Nonetheless, he decided that postponing the election would be such an egregious violation of the Constitution that he could not do so even if it meant his defeat. Fortunately, General Sherman’s capture of Atlanta revived public support for the war and Lincoln was re-elected.

In 1876, the Democrat Samuel Tilden won the popular vote and was leading in the Electoral College until results from South Carolina, Louisiana, and Florida appeared to give the victory to the Republican, Rutherford B. Hayes. Those three former Confederate states were the only ones still occupied by federal troops. Those troops remained to enforce Reconstruction voting laws enfranchising African Americans and protecting civil rights supporters from intimidation. Tilden accused the Republican governors of those states of stealing the election for Hayes. In the face of this unprecedented claim of fraud, the Electoral College postponed its decision. In January of 1877, President Grant signed into law Congress’ extra-constitutional proposal to create an independent commission to determine the winner. It was composed of five members each from the House, the Senate, and the Supreme Court. The commission chose Hayes. The Democrat-controlled House of Representatives threatened to block the decision. It relented only after Republican congressional leaders promised to end Reconstruction thereby removing federal troops from South Carolina, Louisiana, and Florida.

In 2000, Florida was once again at the center of a disputed presidential election. The
Democrat, Albert Gore, won the popular vote by almost half a million votes. He led the Republican, George W. Bush, in the electoral college by a 266 to 246 margin, but Florida’s twenty-five electoral votes were enough to give an electoral vote majority to Bush. Bush led there by fewer than 2,000 votes. Gore challenged the outcome, claiming that paper ballots and voting machines in four heavily Democratic counties were flawed. He demanded a hand recount. The US Supreme Court overruled the Florida Supreme Court order requiring manual recounts. By failing to establish a standard by which those conducting the recounts would judge voter intention, the Florida court violated the Fourteenth Amendment’s requirement that states protect the right of individuals to equal protection and due process of the law.

The Court’s decision was greeted by a furor of protest from Democrats. But Gore agreed to abide by its decision, and so George W. Bush was declared the victor more than a month after Election Day.

Thus, party discord, personal hatreds, war, ballot irregularities, and even allegations of vote fraud have failed to disrupt the orderly succession from one president to another. The courage of Hamilton and Lincoln, the forbearance shown by the supporters of Jackson, Tilden, and Gore, and the wisdom of the Twelfth and Twenty Second Amendments each played their part in preserving the American constitutional commitment to the peaceful transfer of executive power.

Dr. Marc Landy is Professor of Political Science at Boston College. A graduate of Oberlin College, he earned his Ph.D. in Government from Harvard University. He has also co-authored several books, including American Government: Balancing Democracy and Rights and Presidential Greatness.
Overview

The Election of 1824 was the first to be decided in the House of Representatives after the Twelfth Amendment was passed. Jackson received the most electoral votes and the greatest percentage of the popular vote (inasmuch as it existed in 1824), but the House voted for John Quincy Adams. In this lesson, students explore the election of 1824 and evaluate the Electoral College system.

Objectives

Students will:

- Understand the role of the House of Representatives in presidential elections.
- Analyze what the “popular vote” meant in 1824.
- Evaluate the effectiveness of the Electoral College in light of the election of 1824.
- Evaluate the success of the constitutional procedures for presidential election.

Materials

- Handout A: John Quincy Adams and the Election of 1824
- Handout B: Counting the Votes
- Handout C: Votes by State
- Handout D: Guided Controversy: Did the Electoral College System Fail?

Critical Engagement Question

Did the Constitution work as the Founders intended in the election of 1824?

Background/Homework

Have students read Handout A: John Quincy Adams and the Election of 1824 and answer the questions.

Day One

Warm Up [20 minutes]

A. Distribute Handout B: Counting the Votes.
B. Explain to the class that it is 1824 and the Electoral College has finished voting. Invite four students to assume the roles of the top “candidates.” They should introduce themselves and explain how they fared in the election.
C. Assign to the rest of the class roles in the House of Representatives by distributing slips from Handout C: Votes by State.
D. Ask the students to form groups according to the candidate for whom their state voted. (If a state split electoral votes, they should use the candidate who received the most.)
E. Ask students which candidate seems to have won. Review the difference between a plurality and a majority.

F. Have the House members assemble according to additional criteria including: North/South/Midwest; populous vs. sparsely populated; industrial vs. agrarian, etc. and ask students what they observe about the totals.

**Activity [15 minutes]**

Have House members vote among the top three candidates, with each state having one vote. Encourage Adams, Clay, Crawford, and Jackson to take active roles, persuading states to vote for them, or for other candidates.

**Wrap-up [10 minutes]**

When about five minutes remain, call for the House to vote. Compare and contrast the class’s vote with the House’s vote from 1824. What were the reasons for the similarities or differences in outcomes?

**Day Two**

**Warm up [15 minutes]**

A. Remind students that the Electoral College was designed in part to ensure that candidates had support from the entire country, and not just a few large or populous states.

B. Write the following question on the board or overhead: Did the constitutional system of presidential election fail in 1824?

C. Divide the class into groups of four. Within each group, two students should prepare to argue that the Constitution worked; the other pair should prepare to argue that it failed.

D. Give each group Handout D: Did the Electoral College System Fail? Have each group evaluate the facts and prepare their arguments.

**Activity [20 minutes]**

A. Put four chairs—two facing two—in the middle of the room, with the rest of the chairs around them. Invite a group to debate in the “fishbowl.” Students in the audience should take notes on the debaters’ arguments. Allow each pair in the “fish bowl” one to two minutes to make an opening statement, and then have them debate for two to three minutes.

B. Invite more groups into the fishbowl as time permits.

**Wrap-up [10 minutes]**

As a large group, discuss the day’s debates. Ask students:

- Did the “popular vote” as we know it today exist in 1824?
- Did the Constitution work as it was designed to work?
- Jackson accused Adams and Clay of striking a “corrupt bargain.” If Adams did indeed promise to appoint Clay Secretary of State in exchange for his support, was that “corrupt”?
- Do you think the Electoral College system should be reformed or abolished?
  If it were, how would campaigns change?

**Extension**

Have students complete an activity using Andrew Jackson’s first annual Message to Congress at www.ArticleII.org/Electing/Units.
The election of 1824 was the second time in the short history of the United States when no presidential candidate won a majority of electoral votes. (The first was in 1800.) In 1824, the House took up another presidential election.

The Candidates
In the election of 1824, the four leading presidential candidates were John Quincy Adams, Henry Clay, William Crawford, and Andrew Jackson. Representative Henry Clay of Kentucky was Speaker of the House. He had earned the title “The Great Compromiser” for pushing the Missouri Compromise through Congress and settling for a time the growing dispute over slavery in the United States. William Crawford of Georgia had served as a Senator and Secretary of the Treasury.

John Quincy Adams was the son of the second President, John Adams. Adams had been groomed for public service throughout his entire life. Before he turned seventeen, he had served in several posts overseas. Later, Adams graduated from Harvard and ran a successful law practice. He served as Minister to Russia under James Madison and Secretary of State in the Monroe Administration. Political tradition meant that John Quincy Adams was seen as the heir to the Presidency, since most US Presidents up to that time had served as Secretary of State before they were President.

Andrew Jackson was a hero from the War of 1812 and a US Senator. Jackson’s background was very different from that of Adams. Unlike the privileged Adams, Jackson was born in the Carolina backwoods and had little formal schooling. Too young to enlist, he served in the Revolutionary War as an “irregular.” In his late teens he became a lawyer and opened a thriving practice in Tennessee. By 1824, he was known as “Old Hickory,” the brave General who had defeated the British at New Orleans in the War of 1812.

The Electoral College Votes
When the Electoral votes were tallied, no candidate had won a majority. Jackson came out on top with ninety-nine Electoral votes, Adams with eighty-four, Crawford with forty-one, and Clay with thirty-seven. Jackson had received a plurality of the Electoral vote, but he did not have a majority, which means that he did not meet the Constitutional requirement to become President. As required by the Article II of the Constitution, the vote would go to the House of the Representatives with each state allotted one vote.

Clay was eliminated from the contest because the Twelfth Amendment allows only the top three candidates to be voted on—he was fourth. Clay used his influential position as Speaker of the House to make it known that he would be supporting Adams because he did not think that Jackson’s military history qualified him to be President. Clay said, “I cannot believe that killing 2,500 Englishmen at New Orleans qualifies for the various, difficult, and complicated duties of the Chief Magistracy.” Clay called in favors and worked behind the scenes to secure votes for Adams—even the
votes of his home state of Kentucky, where Adams had not even appeared on the ballot.

The House Votes

On February 9, 1825, the House voted. Jackson expected he would win the election. He had won not only the most electoral votes, but also a plurality of the popular vote (as could be collected at the time). But the House elected John Quincy Adams to be President. Jackson was both stunned and outraged.

Several days later Adams nominated Clay to be his Secretary of State. In essence, Adams appointed Clay to the office that was seen as the stepping stone to the Presidency. Jackson was so furious at what he perceived to be “the corrupt bargain”—that Clay would support Adams’ election in the House if Adams would appoint Clay Secretary of State after he became President—that he resigned his seat in the Senate. Jackson claimed that the people’s voice had been distorted because the popular vote had been ignored. He started campaigning around the country on the perceived injustice of what had happened.

Jackson’s four year campaign was a success—he was elected President in his rematch with Adams in the election of 1828. In his first Message to Congress, he recommended abolishing the Electoral College.

Comprehension and Critical thinking questions

1. Who were the top four candidates in the election of 1824?
2. What happened when the Electoral College voted?
3. What does the Constitution say happens when no candidate receives a majority of electoral votes? Why do you think the Founders decided on this procedure?
4. What was Henry Clay’s role in the election of 1824?
5. Adams's election to the Presidency came about exactly as the Constitution required. Do you think he deserved the attacks from Jackson? Why or why not?
Counting the Votes

**John Quincy Adams**
Home State: Massachusetts
Electoral Votes: 84
Pop. Vote: 115,696

**Henry Clay**
Home State: Kentucky
Electoral Votes: 37
Pop. Vote: 47,136

**Andrew Jackson**
Home State: Tennessee
Electoral Votes: 99
Pop. Vote: 152,933

**William Harris Crawford**
Home State: Georgia
Electoral Votes: 41
Pop. Vote: 46,797
VOTES BY STATE

ALABAMA Your state chose electors by popular vote. All four candidates were on the ballot. Jackson won all five electoral votes.

CONNECTICUT Your state chose electors by popular vote. Adams and Crawford were on the ballot. Adams won all eight electoral votes.

DELAWARE The state legislature selected your state’s electors: Crawford won two and Adams won one.

GEORGIA The state legislature selected your state’s electors: All nine electoral votes went to Crawford.

ILLINOIS Your state chose electors by popular vote within districts. All four candidates were on the ballot. Adams won two electoral votes, and Jackson won one.

INDIANA Your state chose electors by popular vote. Adams, Jackson, and Clay were on the ballot. Jackson won all five electoral votes.

KENTUCKY Your state chose electors by popular vote within districts. Clay and Jackson were on the ballot. Clay won all fourteen electoral votes.

LOUISIANA The state legislature selected your state’s electors. Jackson received three and Adams received two.

MAINE Your state chose electors by popular vote within districts. Adams and Crawford were on the ballot. Adams won all nine electoral votes.

MARYLAND Your state chose electors by popular vote within districts. All four candidates were on the ballot. Jackson won seven, Adams won three, and Crawford won one.

MASSACHUSETTS Your state chose electors by popular vote. Of the top four candidates, only Adams was on the ballot. Adams won all fifteen electoral votes.

MISSISSIPPI Your state chose electors by popular vote. Adams, Jackson, and Crawford were on the ballot. Jackson won all three electoral votes.
C

VOTES BY STATE (CONT.)

Missouri Your state chose electors by popular vote within districts. All four candidates were on the ballot. Clay won all three electoral votes.

New Hampshire Your state chose electors by popular vote. Adams and Crawford were on the ballot. Adams won all eight electoral votes.

New Jersey Your state chose electors by popular vote. Adams, Jackson, and Crawford were on the ballot. Jackson won all eight electoral votes.

New York The state legislature selected your state’s electors: twenty-six electoral votes for Adams; five for Crawford; four for Clay, one for Jackson.

North Carolina Your state chose electors by popular vote. Jackson and Crawford were on the ballot. Jackson won all fifteen electoral votes.

Ohio Your state chose electors by popular vote. Adams, Clay, and Jackson were on the ballot. Clay won all sixteen electoral votes.

Pennsylvania Your state chose electors by popular vote. All four candidates were on the ballot. Jackson won all twenty-eight electoral votes.

Rhode Island Your state chose electors by popular vote. Of the top four candidates, only Adams was on the ballot. Adams won all four electoral votes.

South Carolina The state legislature selected your state’s electors: eleven electoral votes for Jackson.

Tennessee Your state chose electors by popular vote within districts. Adams, Crawford and Jackson were on the ballot. Jackson won all eleven electoral votes.

Vermont The state legislature selected your state’s electors: all seven electoral votes went to Adams.

Virginia Your state chose electors by popular vote. All four candidates were on the ballot. Crawford won all twenty-four electoral votes.
GUIDED CONTROVERSY: DID THE ELECTORAL COLLEGE SYSTEM FAIL?

Directions: Use the following information and your knowledge to help you debate the question: Did the Electoral College system fail in 1824?

Facts about the Election of 1824:

- No state had all four of the top candidates on the ballot. Jackson did not appear on the ballot in most New England states; Adams was not on the ballot in Kentucky or North Carolina.
- One fourth of the states had no popular vote—the state legislature appointed the state's electors in New York, Georgia, Vermont, Louisiana, and Delaware.
- The largest state at the time, New York, had no popular vote.
- Clay and Adams favored similar commercial policies.
- Clay and Adams met privately about a month before the House voted.
- Andrew Jackson’s political views were largely unknown in 1824.
- Both Adams and Clay denied making a “corrupt bargain,” and no evidence of an agreement between the two men was ever presented.
CONSTITUTIONAL CONNECTION

To create a context for this lesson, students complete Constitutional Connection: Electing the President.

RUTHERFORD B. HAYES

OVERVIEW

The US Constitution provides an orderly process for electing the President, as described in Article II and the Twelfth Amendment. However, in the election of 1876, two conflicting sets of electoral votes were submitted by each of four states. The Constitution provided no process for determining the legitimate set of votes. Acting outside any constitutional mandate, Congress created a special commission to investigate the returns from Oregon, South Carolina, Louisiana, and Florida. Voting along party lines, the commission ruled that Rutherford B. Hayes had won the disputed election.

OBJECTIVES

Students will:
- Trace the events that led to the election of Rutherford B. Hayes.
- Analyze the provisions of the US Constitution that describe the presidential election process.
- Evaluate Congress’ appointment of a special commission in absence of any constitutional provision for disputed electoral vote counts.
- Predict solutions should a similar situation arise in the future.

CRITICAL ENGAGEMENT QUESTION

Evaluate Congress’ decision to devise an “extra-constitutional” solution to the electoral vote controversy of 1876.

MATERIALS

- **Handout A**: Rutherford B. Hayes and the Disputed Election of 1876
- **Handout B**: Setting the Scene
- **Appendix B**: The United States Constitution
- **Handout C**: What Would You Do?
- **Handout D**: Tilden’s Response to the Election

BACKGROUND/HOMWORK

Have students read Handout A: Rutherford B. Hayes and the Disputed Election of 1876 and answer the questions.

WARM UP [ 5 minutes ]

A. Have five students present the brief role play in Handout B: Setting the Scene.
B. Go over the questions from Handout A and clarify any questions students have.
Activity I [25 minutes]

A. Have students work in small groups to skim the parts of Appendix B: The United States Constitution that pertain to the election of the President in 1876: Article II and the Twelfth Amendment.

B. Ask students: According to the Twelfth Amendment, who is responsible for the actual counting of the votes? Who has the authority to decide, in the event of a dispute, which set of votes to count? The Amendment is not clear about who counts the votes. It might be reasonably inferred that, since the President of the Senate is directed to “open all the certificates,” he has the authority to decide which set of votes to count.

C. Have students remain in their small groups to brainstorm responses to the questions on Handout C: What Would You Do?

D. Have students share their responses to the last two questions and have the class vote on the best solution.

Activity II [20 minutes]

Have students complete Handout D: Tilden’s Response to the Election. Next class, have students share their paraphrases, as well as their responses to question eight.

The Issues Endure

Historians still debate whether Hayes entered office rightfully. A similar set of questions reappeared in 2000, when the nation faced another close election with a controversial settlement. Have students research the presidential elections of 1876 and 2000. How did the political solution devised in 1876 result in a political outcome? Contrast the process and solution in 1876 with those in 2000.

Extension

Cartoonist Thomas Nast chronicled the developments of the campaign and election of 1876 in Harper’s Weekly. Use the materials available at elections.harpweek.com/09Ver2Controversy/Overview-1.htm to review Nast’s approach to the events. Have students select two or three cartoons they believe would be most important to tell the story of the election of 1876. Then challenge students to create their own cartoons.
The US Constitution provides an orderly process for electing the President, as described in Article II and the Twelfth Amendment. According to the Twelfth Amendment, electors meet in each state capital, cast ballots for President and Vice President, and transmit the results to the US Capitol. “...The President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted...” The person winning a majority of the electoral votes is elected President. However, in the election of 1876, four states submitted two conflicting sets of electoral votes. Which set would be counted? The Constitution provided no process for determining the rightful set of votes. Venturing into uncharted territory, Congress appointed a special commission to investigate the returns from Oregon, South Carolina, Louisiana, and Florida.

The “Last battle of the Civil War”

The election of 1876 has been called the “last battle of the Civil War.” The entire nation was weary of Reconstruction. Northerners, concerned about economic depression and corruption in their own states, no longer worried about the civil rights of Southern blacks. Southerners were tired of federal interference in their politics. After the Civil War, federal troops had been stationed throughout the South in order to keep the peace and protect the rights of former slaves. As the troops left, the Republican state governments established under Reconstruction were replaced by all-white, Democratic administrations determined to reestablish the former social systems of the south. By 1875, federal troops had been withdrawn from all Southern states except Florida, Louisiana, and South Carolina. The end of Reconstruction was coming, regardless of which party won the presidency in 1876.

The Republican candidate was Rutherford B. Hayes. Hayes was a lawyer and former Civil War Union general. In 1876 he was Governor of Ohio and was widely esteemed for integrity. The Democrat was New York Governor Samuel Tilden. Tilden was also widely respected. As district attorney, he had taken on corruption in New York City politics. There was little difference between the candidates’ platforms. They agreed on the need for civil service reform, more responsible economic policies, and, as Hayes put it, “an intelligent and honest administration of government, which will protect all classes of citizens...” in the South.

Election Results

Based on telegraphed reports by the end of election night, both Hayes and Tilden were confident that Tilden had won the presidency. It became clear that Tilden had won the popular vote and had won 184 of the needed 185 electoral votes. Hayes, with only 165 electoral votes, would win the presidency only if he won all twenty electoral votes from the remaining states.

In South Carolina, Louisiana, Florida, and Oregon, each party claimed victory and charged the opponent with fraud. In Oregon, a single elector was challenged as being ineligible.

In the three Southern states, Reconstruction Republican governments were
still in control. In South Carolina, Louisiana, and Florida, each state had a “returning board” whose task was to throw out fraudulent votes. The Republican-controlled boards identified widespread Democratic fraud. In reality, both parties used violence and intimidation: Democrats to prevent blacks from voting, and Republicans to ensure that blacks voted Republican. Both sides bought votes.

The state returning boards determined that Hayes had won the decision—and the electoral vote—in each case. However, Democratic electors met and voted in these state capitals anyway. The result was that two sets of electoral votes were sent to Washington, D.C. from each of these Southern states.

**The Electoral Commission**

The Constitution does not address a situation where states submit conflicting sets of electoral votes. Congress created its own solution: a special electoral commission to investigate the disputed results. The commission included Senators, Representatives, and Supreme Court Justices—seven Democrats and eight Republicans.

Tilden opposed the commission, believing the election should be decided in the House of Representatives. Hayes thought the commission arrangement was unconstitutional: “... the appointment of the commission by act of Congress violates that part of the Constitution which gives the appointment of all other officers to the President” (Article II, Section 2, Clause 2).

Beginning Feb. 1, 1877, before a joint session of the House and Senate, electoral reports from the states were opened in alphabetical order. For the next few weeks, the electoral commission listened to testimony from lawyers on both sides as each disputed state’s turn came. Each time the vote was eight to seven to award the state to Hayes. The Democrats in Congress tried various stalling strategies, but when the last of the electoral votes was counted on March 2, Hayes had received all twenty of the disputed electoral votes and won the election by 185 – 184.

On Monday, March 5, 1877, Rutherford B. Hayes was sworn in as the nineteenth President of the United States, and soon the last of the federal troops were removed from the South. The closest election in our history up to that point had been settled in a manner not provided by the Constitution.

---

**Critical Thinking Questions**

1. According to Amendment Twelve, how are electoral votes to be counted?
2. Why was the electoral result in doubt in 1876?
3. On what issues did Hayes and Tilden agree?
4. Why was Reconstruction coming to an end regardless of who won the election?
5. In what ways did both parties violate the principles of a free and fair election?
Note: The statements of Hayes, Tilden, and Grant are actual quotes from 1876-1877.

Narrator: Since the 1876 election a few days ago, which is still too close to call, we have asked several of America’s political leaders for comments.

Reporter #1: Governor Hayes, you have stated that you believe you have won the election fair and square, and that the Republican Party must avoid any trace of dishonesty or fraud. How do you think the election should be decided?

Rutherford B. Hayes: “Let Mr. Tilden have the place by violence, intimidation, and fraud, rather than prevent it by means that will not bear the purest scrutiny ...we are not to allow our friends to defeat one outrage and fraud by another. There must be nothing crooked on our part.”

Reporter #1: Republicans across the country might disagree with you.

Hayes: “He serves his party best who serves his country best.”

Reporter #2: President Grant, you have also expressed an opinion about the possibility of fraud in the recent election.

President Ulysses S. Grant: “No man worthy of the office of President should be willing to hold it if counted in or placed there by fraud. Either party can afford to be disappointed in the result, but the country cannot afford to have the result tainted by the suspicion of illegal or false returns.”

Reporter #3: Governor Tilden, you have avoided making public comments about the election. It appears that you have won the popular vote and your supporters are threatening violence if the election is stolen from you. Do you have a statement for us?

Samuel Tilden: “Be satisfied with the reflection that the people are too patriotic, too intelligent, too self-poised, to allow anything perilous to be done that may disturb or destroy our peculiar form of government. Don’t be alarmed.”

Reporter #3: What do you say to your supporters who shout, “Tilden or Blood!”?

Tilden: “It will not do to fight. We have just emerged from one Civil War, and it will never do to engage in another; it would end in the destruction of free government. We cannot back down. We can, therefore, only arbitrate.”

Narrator: The election’s outcome was settled by a special electoral commission in a process completely outside the provisions of the US Constitution. Hayes became President, but he was called, “Rutherfraud B. Hayes” and “His Fraudulency,” in spite of the fact that he took no part in the process that sent him to the White House.
What Would You Do?

Directions: Applying what you know about the Constitution and the election of 1876, answer the questions below.

1. Brainstorm some other actions Congress could have taken in response to the electoral returns from South Carolina, Louisiana, and Florida in 1876.

2. Should Congress have devised the Special Commission—a solution to the controversy that was outside the Constitution?

3. How, if at all, might other levels and branches of government have gotten involved?

4. Imagine you and your group members are members of Congress. Your task is to draft an “Election Controversy Amendment” that specifically details what action(s) the federal government should take if states send conflicting electoral vote counts. Write your proposed amendment in the space below.
Tildens’s response to the election

Directions: Read the information below and answer the questions that follow.

Samuel Tilden was asked why he did not simply declare himself President based on the popular vote. Why did he not fight more visibly to claim the post in the months between the election and Hayes’s inauguration? He said, “After the electoral scheme, which I always opposed, was complete, I never entertained the idea of taking the oath of office either in Washington or in New York or elsewhere. It would have been ridiculous. I had no evidence of title then—no claim—no warrant.” He also commented, “I can retire to private life with the consciousness that I shall receive from posterity the credit of having been elected to the highest position in the gift of the people without any of the cares and responsibilities of the office.”

In a speech he gave at a dinner in June, 1877, Tilden stated,

“In the world’s history, changes in the succession of governments have usually been the result of fraud or force. It has been our faith and our pride that we had established a mode of peaceful change to be worked out by the agency of the ballot box. The question now is whether our elective system, in its substance as well as its form, is to be maintained.

This is the question of questions. …It involves the fundamental right of the people. It involves the elective principle. It involves the whole system of popular government. The people must signal condemn the great wrong which has been done to them. They must strip the example of everything that can attract imitators. …But when those who condemn the wrong shall have the power they must devise the measure which shall render a repetition of the wrong forever impossible.

If my voice could reach through the country and be heard in its remotest hamlet, I would say: Be of good cheer. The Republic will live. The institutions of our fathers are not to expire in shame. The sovereignty of the people shall be rescued from this peril and reestablished.”

Tilden died in 1886. The inscription on his headstone is: “I Still Trust the People.”

Write each of the following Tilden statements in your own words:

1. “I had no evidence of title then—no claim—no warrant.”

_______________________________________________________________________
_______________________________________________________________________

2. “I shall receive from posterity the credit of having been elected to the highest position in the gift of the people without any of the cares and responsibilities of the office.”

_______________________________________________________________________
_______________________________________________________________________
3. “Everybody knows that, after the recent election, the men who were elected by the people were counted out; and the men who were not elected were counted in and seated.”

_______________________________________________________________________

4. “It has been our faith and our pride that we had established a mode of peaceful change to be worked out by the agency of the ballot box. The question now is whether our elective system, in its substance as well as its form, is to be maintained.”

_______________________________________________________________________

5. “It involves the fundamental right of the people. It involves the elective principle. It involves the whole system of popular government. The people must signally condemn the great wrong which has been done to them.”

_______________________________________________________________________

6. “...they must devise the measure which shall render a repetition of the wrong forever impossible.”

_______________________________________________________________________

7. “Be of good cheer. The Republic will live. The institutions of our fathers are not to expire in shame. The sovereignty of the people shall be rescued from this peril and reestablished.”

_______________________________________________________________________

8. It has been said that Tilden’s response to the election—accepting the result even though he believed a great injustice had been done—was an example of great patriotism. Discuss whether you agree or disagree and why.

_______________________________________________________________________
CONSTITUTIONAL CONNECTION

To create a context for this lesson, students complete Constitutional Connection: Electing the President.

BUSH V. GORE (2000)

OVERVIEW

The controversy of the election of 2000, unlike the elections of 1800 and 1824, was not at the national level but in a single state. After the United States Supreme Court halted a statewide manual recount ordered by the Florida Supreme Court, Florida’s electoral votes—and the Presidency—went to George W. Bush. In this lesson, students will explore the statutes, arguments, and court decisions that led to the Supreme Court’s ruling. Finally, they will evaluate the Court’s decision.

OBJECTIVES

Students will:

- Understand the major events during the 2000 presidential election in Florida.
- Analyze arguments from different sides of the case.
- Analyze applications of the Fourteenth Amendment.

MATERIALS

- Handout B: Interview Questions
- Handout C: Document-Based Question
- Handout D: Organizing Documents

CRITICAL ENGAGEMENT QUESTION

Did the United States Supreme Court correctly decide Bush v. Gore (2000)?

DAY ONE

BACKGROUND/HOMEWORK

[20 minutes the day before]

A. Have students read Handout A: George W. Bush and the Supreme Court Case of Bush v. Gore (2000) and answer the questions.

B. Ask students to interview a parent, older sibling, or friend who is old enough to recall the events of the 2000 Election. They may wish to use Handout B: Interview Questions to guide their conversation.

WARM-UP [10 minutes]

A. Show the five-minute thematic documentary The Electors Shall Meet: Electing the President, found at www.ArticleII.org/Electing.

B. Invite students to share what they learned from their interviews.
Activity [25 minutes]

C. Distribute Handout C: Document Based Question. Divide the class into pairs and have students skim over the key question, documents, and scaffolding questions.

D. Assign two or three documents to each group. Have them examine the documents closely and answer the scaffolding questions on their own paper. Note: Because of its longer length, the group that examines the Supreme Court’s majority opinion should examine that document only.

E. As a large group, go over each of the documents in turn. Have a spokesperson from each group share their responses to the scaffolding questions. See the Answer Key for suggested responses.

Wrap Up [10 minutes]

A. Distribute Handout D: Organizing Documents. Have groups decide whether each document would most likely be used in argument by the attorney for Governor Bush, the attorney for Vice President Gore, by both, or by neither. They should record their selections on Handout D.

B. Reconvene the class and go over responses to Handout D.

C. Write or project the key question: “Did the United States Supreme Court correctly decide Bush v. Gore (2000)?” and let students know that they will be writing their answer to this question in an essay next class. Students should annotate the documents with ideas, information, or an outline that will help them write their essays.

Day Two

Activity [50 minutes]

Give students the entire class period to write their essays in response to the key question on Handout C. They should use their annotated documents, and, if you choose, Handout A, to guide their writing.

Extensions

A. Have students build on the essays they wrote in class to address constitutional issues raised by the case of Bush v. Gore (2000):
   - Article II of the Constitution: Power to appoint electors is given to the state legislatures. Did the Florida Supreme Court decision violate Article II?
   - Separation of powers: Did the Florida Supreme Court interpret Florida law, or did it actually make new law by forcing Harris to accept the late returns, and later ordering a state-wide recount?
   - Federalism: When, if ever, should the US Supreme Court be involved in state Supreme Court decisions about state law?
On the evening of November 7, 2000, many Americans went to sleep believing they knew who would be President of the United States for the next four years. But they woke up to find themselves, along with the rest of the nation, in a kind of limbo which would last more than a month. Who had won the election of 2000: Texas Governor George W. Bush, or Vice President Al Gore?

News stations projected Gore as the winner of Florida by 8pm. But by 10pm, those same stations took back their projections. By 2am, Bush was in the lead in Florida, and the television networks declared him the winner. But not long after that, Florida changed to “too close to call” with Bush leading Gore by 1,784 votes (2,909,135 to 2,907,351).

Nationally, Bush had won 246 electoral votes; Gore had won 260. The number of electoral votes needed to win the election is 270. Florida’s twenty-five electoral votes hung in the balance. The outcome of the election would depend on how Florida voted.

The Recounts Begin

Florida election law called for an automatic machine recount when the margin of victory was less than one half of one percent. After the machine recount, Bush’s lead was down to 327 votes.

As allowed under Florida law, Gore requested hand recounts of ballots in Palm Beach, Broward, Miami-Dade, and Volusia counties. About 1.8 million votes had been cast in these heavily Democratic counties.

Florida Law

Florida law permitted the manual recounts. The law also required counties to deliver their results to the Florida Secretary of State by November 14. Some counties said this was not enough time.

To further complicate things, Florida had two statutes about late vote counts which seemed to contradict each other. One statute said the Secretary of State “shall” ignore late returns; the other statute said the Secretary “may” ignore late returns.

The Secretary of State Katherine Harris—who was also the co-chairman of Bush’s Florida campaign—said she would not take results submitted after the legal deadline. Gore filed suit to force Harris to accept the late returns. Bush and Secretary of State Harris asked the Florida Supreme Court to block the recounts, but the Court refused. The Florida Supreme Court ordered Harris not to certify the state’s election results until an emergency hearing could take place.

The Florida Supreme Court

The Florida Supreme Court ruled (7-0) that the recounts should continue. Further, the Court ordered that the votes had to be counted in the state’s totals despite the deadline in Florida law. The Court set a deadline of 5pm on November 26 for counties to submit their totals.

Florida Governor Jeb Bush—brother of George W. Bush—asked the US Supreme Court to review the Florida high court’s ruling. In Bush v. Palm Beach County Canvassing Board, the Supreme Court unanimously held that there was “considerable uncertainty as to the precise grounds for the decision.” The Supreme Court sent the case back to Florida with questions for the state Supreme Court.

Miami-Dade County
officials stopped their manual recount, leaving 9000 votes not counted; Palm Beach County had about 1000 votes left to count by 5pm deadline on November 26. Harris turned down the county’s request for an extension and rejected the partial vote count that had been submitted by the deadline.

**Gore Contests the Election**

On November 26, the deadline set by the Florida Supreme Court, Harris certified the results of the election: Bush had won Florida and, therefore, the Presidency. With the election results now certified, Gore officially contested the Florida election results. He challenged the results in Palm Beach and two other counties.

While all these arguments were taking place in the court system, the Florida legislature called a special session to consider whether to appoint the state’s electors itself. It did not do so.

The Florida Supreme Court reasoned that accuracy was more important than finality, and ordered a statewide manual recount. The vote was 4-3. Neither Bush nor Gore had asked for a state-wide recount. The state-wide recount was halted the next day by the US Supreme Court, which issued a stay (an order to stop until a hearing can take place.) The case would go before the US Supreme Court on December 11—a week before the Electoral College was set to cast its votes. The question before the US Supreme Court would be: Did the Florida Supreme Court exceed its authority by ordering a state-wide manual recount? And, would such a recount be constitutional?

**The Constitutional Arguments**

George W. Bush argued that a statewide manual recount would violate the United States Constitution’s Fourteenth Amendment. The Fourteenth Amendment says that “no state shall ... deny to any person within its jurisdiction the equal protection of the laws.” Since counties were using different standards to decide which votes would count, Bush argued that Florida was not treating all its citizens equally under the law.

Gore argued that there was a uniform standard for re-counting votes. The standard, as stated in Florida statute, was that a vote would count if the clear intent of the voter was reflected in the ballot. Gore also pointed out that there were five times as many “undervotes” (votes where machines registered no vote for President) in punch-card counties than in counties with optical voting machines. Therefore, he argued, the recount standard would actually be more uniform than the standards applied on Election Day.

The Supreme Court agreed with Bush and ruled (5-4) to halt the manual recounts. Therefore, the Florida results as certified by the Secretary of State were final, and George W. Bush became the forty-third President of the United States.

---

**Comprehension and Critical Thinking Questions**

1. What state was at the center of the presidential election controversy in 2000?
2. What was the significance of the November 26 deadline set by the Florida Supreme Court?
3. What did the Florida Supreme Court order in response to Gore’s challenge of the Florida election results?
4. What was Bush’s argument before the Supreme Court? What was Gore’s argument?
**Interview Questions**

**Directions:** Interview a parent, older sibling, or friend who is old enough to recall the events of the 2000 election. You may wish to ask:

1. Where were you on Election Day, 2000? __________________________________________


3. If you were watching when TV stations began retracting their projections of the winner of the election, how did that make you feel? How did you feel as the evening’s drama progressed? __________________________________________

4. What were the issues involved in the Florida controversy? Do you believe you understood them? __________________________________________

5. Did you understand the arguments at the state and federal level as you remember them? __________________________________________

6. For the time period when it was unclear who was going to be the next President, were you ever worried that violence would break out in Florida or elsewhere? Why or why not? __________________________________________

7. Did you ever become impatient with the process? Why or why not? __________________________________________

8. Did you believe the correct outcome was reached? Why or why not? __________________________________________
KEY QUESTION:
Did the United States Supreme Court correctly decide Bush v. Gore (2000)?

DOCUMENTS:
A United States Constitution, Article II, Section 1, 1789
B The Fourteenth Amendment, 1868
D Florida Statute Title IX, Chapter 102: 102.168(8) Contest of Election (1999)
E Florida Statutes Title IX, Chapter 102: Deadline for submission of county returns to the Department of State (2000)
F Florida Supreme Court Decision (7-0) in Palm Beach County Canvassing Board v. Katherine Harris, November 21, 2000
G Gore v. Harris, Majority Opinion (4-3), Florida Supreme Court, December 8, 2000
H Election Workers Check Ballots in Broward, Florida
I Oral Arguments (Bush), Bush v. Gore, 2000
J Oral Arguments (Gore), Bush v. Gore, 2000
K United States Supreme Court, Majority Opinion (5-4), Bush v. Gore, 2000
N Stu’s Views, 2002
**DOCUMENT A**

**United States Constitution, Article II, Section 1, 1789**
Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors...

- Which branch of state governments has the power to direct the appointment of presidential electors?

**DOCUMENT B**

**The Fourteenth Amendment, 1868**
No state shall ... deny to any person within its jurisdiction the equal protection of the laws.

- Rephrase this section of the Fourteenth Amendment in your own words.

**DOCUMENT C**

...No vote shall be declared invalid or void if there is a clear indication of the intent of the voter as determined by the canvassing board.

- What does this Florida statute say about declaring votes invalid?
**DOCUMENT D**

**Florida Statute Title IX, Chapter 102: 102.168(8) Contest of Election (1999)**

The circuit judge to whom the contest is presented may fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked, to prevent or correct any alleged wrong, and to provide any relief appropriate under such circumstances.

- What does this Florida statute empower judges to do in election contests?

**DOCUMENT E**

**Florida Statutes Title IX, Chapter 102: Deadline for submission of county returns to the Department of State (2000)**

102.111

If the county returns are not received by the Department of State by 5 p.m. of the seventh day following an election, all missing counties shall be ignored...

102.112

Returns must be filed by 5 p.m. on the 7th day following the...general election...If the returns are not received by the department by the time specified, such returns may be ignored...

- What date was “the seventh day following an election” in 2000?
- How do these two statutes differ?
- Why was the difference in the statutes’ wording important in the contested Florida election?
**DOCUMENT F**

**Florida Supreme Court Decision (7-0) in *Palm Beach County Canvassing Board v. Katherine Harris*, November 21, 2000**

Because the right to vote is the pre-eminent right in the Declaration of Rights of the Florida Constitution, the circumstances under which the Secretary of State may exercise her authority to ignore a county’s returns filed after the initial statutory deadline are limited....

We must invoke the equitable powers of this Court to fashion a remedy that will allow a fair and expeditious resolution ... Accordingly, ... amended [vote] certifications must be filed ... by 5pm on Sunday, November 26, 2000 and the Secretary of State ... shall accept any such amended certifications...

- How did the Florida Supreme Court interpret the statutes in Document E?
- Was the Florida Supreme Court’s action consistent with powers given to the courts in Document D?
- What did the Florida Supreme Court order the Secretary of State to do?

**DOCUMENT G**

**Gore v. Harris, Majority Opinion (4-3), Florida Supreme Court, December 8, 2000**

The need for accuracy must be weighed against the need for finality.... we must do everything required by law to make sure that the legal votes that have not been counted are included in the final election results....

Only by examining the contested ballots, which are evidence in the election contest, can a meaningful and final determination ... be made.

Claims have been made that ... because this is a statewide election, statewide remedies would be called for.... We agree....

In tabulating the ballots and in making a determination of what is a “legal” vote, the standard to be employed is that established by the Legislature in our Election Code which is that the vote shall be counted as a “legal” vote if there is “clear indication of the intent of the voter.”

- What “remedy” did the Florida Supreme Court order in this decision?
Election Workers Check Ballots in Broward, Florida

Describe the manual recount process as depicted in this photograph.
**DOCUMENT I**

**Oral Arguments (Bush), Bush v. Gore, 2000**

Mr. Olson (representing Bush): The Florida Supreme Court...changed statutory deadlines, severely limited the discretion of the state's chief election officer, changed the meaning of words such as “shall” and “may” into “shall not” and “may not,” and authorized extensive, standardless, and unequal manual ballot recounts...

- **What objections does Bush’s attorney make to the Florida Supreme Court rulings?**

**DOCUMENT J**

**Oral Arguments (Gore), Bush v. Gore, 2000**

Mr. Boies (representing Gore): The standard is whether or not the intent of the voter is reflected by the ballot. That is the uniform standard throughout the state of Florida. ....Some states have made specific criteria their law. Other states, ten or eleven of them ... have stuck with this very general standard.

- **What argument does Gore’s lawyer make about the standard used in Florida manual recounts?**
United States Supreme Court, Majority Opinion (5-4), Bush v. Gore, 2000

Equal protection applies … to the manner of [the right to vote]. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.

Much of the controversy seems to revolve around ballot cards designed to be perforated by a stylus but which, either through error or deliberate omission, have not been perforated with sufficient precision for a machine to count them. In some cases a piece of the card—a chad—is hanging, say by two corners. In other cases there is no separation at all, just an indentation.

The Florida Supreme Court has ordered that the intent of the voter be discerned from such ballots…. Florida’s basic command for the count of legally cast votes is to consider the “intent of the voter.” This is unobjectionable as an abstract proposition and a starting principle. The problem [is] in the absence of specific standards to ensure its equal application….

The standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another.

When a court orders a statewide remedy, there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied….

[Federal law says that] any controversy or contest that is designed to lead to a conclusive selection of electors [must] be completed by December 12. That date is upon us, and there is no recount procedure in place under the State Supreme Court’s order that comports with minimal constitutional standards. Because it is evident that any recount seeking to meet the December 12 date will be unconstitutional for the reasons we have discussed, we reverse the judgment of the Supreme Court of Florida ordering a recount to proceed….

Why did the US Supreme Court stop the statewide manual recount?

Why was the date of December 12 important?
**DOCUMENT L**


The Constitution assigns to the States the primary responsibility for determining the manner of selecting the Presidential electors. When questions arise about the meaning of state laws, including election laws, it is our settled practice to accept the opinions of the highest courts of the States as providing the final answers....

Although we may never know with complete certainty the identity of the winner of this year’s Presidential election, the identity of the loser is perfectly clear. It is the Nation’s confidence in the judge as an impartial guardian of the rule of law.

What objection does Justice Stevens make to the majority’s ruling?

**DOCUMENT M**


By halting the manual recount, and thus ensuring that the uncounted legal votes will not be counted under any standard, this Court crafts a remedy out of proportion to the asserted harm. And that remedy harms the very fairness interests the Court is attempting to protect. The manual recount would itself redress a problem of unequal treatment of ballots.

What objection does Justice Breyer make to the majority’s ruling?
What is the cartoonist’s point of view?
**ORGANIZING DOCUMENTS**

**Directions:** Read each document and decide whose attorney would be most likely to use it when arguing before the Supreme Court. Then put an “X” in the appropriate column. If the document supports both sides, put an “X” in both boxes. If it supports neither, leave both boxes blank.

<table>
<thead>
<tr>
<th>DOCUMENT</th>
<th>Supports Bush</th>
<th>Supports Gore</th>
</tr>
</thead>
<tbody>
<tr>
<td>A United States Constitution, Article II, Section 1, 1789</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>B The Fourteenth Amendment, 1868</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>D Florida Statute Title IX, Chapter 102: 102.168(8) Contest of Election (1999)</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>E Florida Statutes Title IX, Chapter 102: Deadline for submission of county returns to the Department of State (2000)</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>F Florida Supreme Court Decision (7-0) in <em>Palm Beach County Canvassing Board v. Katherine Harris</em>, November 21, 2000</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>G <em>Gore v. Harris</em>, Majority Opinion (4-3), Florida Supreme Court, December 8, 2000</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>H Election Workers Check Ballots in Broward, Florida</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>K United States Supreme Court, Majority Opinion (5-4), <em>Bush v. Gore</em>, 2000</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>N Stu’s Views, 2002</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
**Key Question:**
Did the United States Supreme Court correctly decide *Bush v. Gore* (2000)?

*Answer the key question in a well-organized essay that incorporates your interpretations of the documents and your own knowledge of history.*
Constitutional Connection:
The President and Federal Power
1. The president can sign bills into law, or refuse to sign (veto) them and return them to Congress. The President can refuse to approve proposed laws, and only if Congress has a large (2/3rds) majority in both houses these proposals can become law over his objection.
2. The power to execute the laws of the United States is located in or given to one person, who will be called the President.
3. The President must swear or affirm that he will perform his job faithfully and always work to uphold the Constitution.
4. The President will keep Congress informed on the condition of the country. He will also recommend laws he thinks are needed and that would be helpful.
5. The President has a responsibility to enforce the law without fail.
6. The President can be removed from office for bad acts. He is not above the law.

James Madison
Handout A: James Madison and the Bonus Bill
1. He proposed the power to grant charters of incorporation for the construction of canals.
2. They argued that the whole nation would be taxed for such internal improvements but the economic benefits would be felt only in the localities where they were built. Further, such projects would lead to competition among the states for federal monies.
3. A bill that would apply profits from the newly reauthorized National Bank toward the building of roads and canals.
4. He believed that it was unconstitutional—Congress did not have the expressed power to build roads and canals, nor could that power be inferred from its enumerated powers. Further, the limits in the Constitution were meant to keep the powers of the federal and state governments distinct.
5. Accept reasoned answers.

Theodore Roosevelt
Handout A: Theodore Roosevelt and the Bully Pulpit
1. A wonderful place from which to preach, or spread his ideas.
2. Other countries saw that the US would not hesitate to intervene in the affairs of other nations when it would benefit the US.
3. Greater restrictions on corporations; greater ability for the federal government to acquire land; breaking up consolidated companies; protecting companies from extreme demands from labor unions; child labor laws; workers’ compensation; regulations on the nation’s food supply.
4. The Founders’ view tends to produce more limited government and a weaker executive; Roosevelt’s view tends toward bigger government and a stronger executive.

Handout B: President Roosevelt and the Constitution
Examples include:
1. His taking on of consolidated companies under the Sherman Anti-Trust Act; “he shall take care that the laws be faithfully executed…” (Article II, Section 3); He made the President a more prominent legislative advocate.
2. Advocated greater ability for the federal government to acquire land; “recommend to [Congress’s] consideration such measures as he shall judge necessary and expedient…” (Article II, Section 3). He made the President a more prominent legislative advocate.
3. Helping revolutionaries in Panama; “The President shall be commander in chief of the Army and Navy of the United States…” (Article II, Section 2). He engaged in military action.
4. Negotiated an end to the Russo-Japanese War. “He shall receive ambassadors and other public ministers...” (Article II, Section 3) The President became actively involved in the affairs of other nations.

Lyndon Johnson and Ronald Reagan

Handout A: Presidents Johnson and Reagan: Two Views of Federal Power
1. Great Society programs would go beyond ending racial injustice, and improve and perfect all areas of life.
2. Laws promoting education; beautifying the country; strengthening medical research; developing distressed regions; preventing crime; removing barriers to voting; supporting the arts; and eliminating waste and inefficiency
3. Reagan stressed his belief in the power of individuals over their own destinies. Government, he said, was not the solution to the problem of the present crisis, government was the problem.
4. He signed nine tax bills providing across-the-board tax cuts. He called for $41.4 billion in budget cuts, mostly from Great Society programs. While not touching Medicare and Social Security, Reagan approved cuts in federal education programs, food stamp programs, workplace initiatives, and other non-military domestic programs.
5. Accept reasoned answers.

Handout B: Who Said It?
1. Johnson
2. Reagan
3. Johnson
4. Reagan
5. Reagan
6. Johnson

Unit 2—Commander in Chief: War and the Constitution

Constitutional Connection: War and the Constitution
1. Powers of Congress; Powers denied to Congress
2. Accept reasoned answers.
3. Accept reasoned answers.
4. Accept reasoned answers.

John Adams

Handout A: John Adams and the Alien and Sedition Acts
1. Adams wanted to quiet support for the French because he believed the radical ideas driving the French Revolution were extremely dangerous for the young United States.
2. The Alien Act made immigrants wait longer before becoming citizens and voting. The Sedition Act gave the President more power to deport immigrants, and made it a crime to portray the President and Congress in a way designed to stir up hatred.
3. Critics argued the laws violated the First Amendment, which prohibits Congress from passing laws abridging freedom of speech and press. Supporters of the laws argued that they were not violations of free speech and press because they only punished libel and libel was not a right; the law did not impose a prior restraint; and the laws were necessary for national security.
4. Accept reasoned answers.
5. Some students may say that limits such as restrictions on interfering with the draft (or more general limits on speech and press), and increased state power to search are constitutional to prevent war. Others may say that restrictions on civil liberties have been imposed (and been upheld by the Supreme Court) during the Civil War, World War I, World War II, as well as the War on Terror, but that these restrictions have taken place during actual wartime; the threat of war alone (absent actual war) does not justify restrictions on civil liberties.
**Lincoln and Habeas Corpus**

**Handout A: Abraham Lincoln and Habeas Corpus**
1. the power of a judge to make the government show just cause for putting someone in jail
2. In listing limits on powers of Congress, the Constitution says habeas corpus cannot be suspended except in times of rebellion or invasion.
3. Merryman was arrested for aiding the Confederacy. He demanded to be charged in open court.
4. Taney ruled that only Congress, not the President, could suspend habeas corpus, and that even if it were properly suspended, only members of the military could be tried in military courts. Accept reasoned answers.
5. The “one” law refers to writs of habeas corpus. Lincoln meant that in a time of almost complete lawlessness, it would be wrong to let the government fall apart for the sake of not violating one particular law.

**Handout B: A Proclamation**
1. President Abraham Lincoln; September 24, 1862
2. People rebelling against the US will be subject to martial law and military Courts Martial, and writs of habeas corpus will be suspended with respect to all prisoners.
3. A draft has been instituted, and the civil justice system is inadequate to suppress the rebellion.

**Handout D: Case Briefing Sheet**
Article I, Sections 8 and 9: These sections of the Constitution could support Milligan’s case because the power to provide for the common defense, and the limit on power to suspend writs of habeas corpus, appear in Article I with the powers of Congress and not the President. These sections could also support the government’s case, as Congress did suspend habeas corpus in 1863. Additionally, the Constitution permits suspensions of habeas corpus in cases of rebellion.
Article II, Section 2: This section could support the government’s case, as the nation is at war and the President is Commander in Chief. This section could also support Milligan’s case because Milligan is not a member of the military and therefore the President has no power to try him in a military court.

**Wilson and the Espionage Act**

**Handout A: Woodrow Wilson and the Espionage Act**
1. the Selective Service Act; challenges to Bill of Rights protections for accused persons
2. The Act outlawed attempts to cause disloyalty in the military, or to interfere with the country’s military recruitment and enlistment efforts.
3. The people were sovereign and did not give up their right to control their government or express their views because the country was at war.
4. The Act was amended to include restrictions on speech. Disloyal speech, speech that was “abusive” towards the US government, and speech that supported the cause of any country with which the US was at war were criminalized.
5. Accept reasoned answers.
6. To evaluate the claim, one would need: historically accurate and complete information about “the suppression of freedom” during World War I as well as historically accurate and complete information about violations of civil liberties by the various branches and levels of government throughout American history.
Constitutional Connection: Slavery and the Constitution

1. The Constitution's purpose to establish justice and ensure the blessings of liberty could be understood to have embedded within the Constitution the end of slavery. The Preamble uses the word “people,” and in Article I, enslaved persons are referred to as “persons.”

2. The 3/5ths clause, as it is known, acknowledged a continuing role for slavery in calculating population for the purpose of taxation and representation. This clause was the result of intense debate at the Constitutional Convention over representation in Congress—three-fifths of a state’s slave population would be counted for the purpose of representation in Congress. The clause did not assert that slaves were “three-fifths of a person.”

3. This clause protected the international slave trade for a limited time, which could be understood to protect slavery. Conversely, the limitation could be read as intended to limit slavery as soon as possible; indeed, Congress outlawed the importation of slaves as soon as it was able to in 1808. Slaves are referred to as “persons”, which could be understood to mean they were born with an equality of natural rights.

4. This clause required the return of fugitive slaves, providing “property” protection for slave owners.

5. The provision excluding the “first and fourth clauses in the ninth section of the first article” from amendment before 1808 could be understood as protecting slavery for a limited time, since the first of those clauses protects the international slave trade until 1808.

6. This provision arguably provided protection for slavery, since slaves were considered property and slave-owners could not be deprived of them without due process. It arguably doomed slavery since no one could be deprived of life or liberty without due process.

7. Since Congress is not given the enumerated power to legislate on slavery, it was reserved to the states to make laws on slavery. This could be understood to support slavery.

James Buchanan

Handout A: James Buchanan and the Dred Scott Decision

1. Dred Scott was the slave of an army physician who had lived for almost nine years in the Wisconsin Territory (now Minnesota), where the Missouri Compromise had outlawed slavery. Scott sued for his freedom on the grounds that he had once lived in a free territory. The Court ruled against him.

2. In secret consultation with Justice James Grier, Buchanan had learned that the Supreme Court would hand down a pro-Southern decision.

3. The violence of “Bleeding Kansas” showed that “popular sovereignty” was not going to work. Students may also suggest that allowing certain people (voting whites) to vote on the freedom of others (enslaved people) went against the American ideals of natural rights, equality, and liberty.

4. He believed states had the power to make laws about slavery.

5. Since it supported the idea that there could be “property” in people, as opposed to supporting the human rights of enslaved individuals, the Supreme Court’s decision was inconsistent with the nation’s highest principles. It demonstrated that a political decision was unlikely, and set the stage for a Civil War.

Handout C: Slavery and American Ideals

Liberty: 1, 2, 3, 4, 6
Federalism/Powers of States: 2, 3, 4, 6
Property Rights: 2, 3
Equality: 1, 2, 3
Limited Government: 4, 6

Lincoln and Emancipation

Handout A: Abraham Lincoln and the Emancipation Proclamation

1. The primary object of the war was to save the Union.

2. Because the Union Army had so many losses by July 1862, this forced him to consider that freed slaves would fight for the Union if they could reach the North. Furthermore, the South would lose a significant work force, making it harder for them to continue the war.
He believed slavery was protected by the Constitution. Only by exercising his wartime authority as Commander in Chief could Lincoln free the slaves while remaining consistent with the Constitution.

Because it applied only behind enemy lines, no one was legally freed at the time the Proclamation was issued. Slaves in territory re-conquered by the Union were also not freed. But emancipation led almost 200,000 formerly enslaved people to leave the South and serve the Union side.

The Emancipation Proclamation was an important first step toward abolition. Lincoln changed the meaning of the war. He said that people were fighting to make the nation live up to its promise that “...all men are created equal...”

Accept reasoned responses.

ANDREW JOHNSON

Handout A: Andrew Johnson and the Civil War Amendments

1. Johnson wanted to “restore” the former Confederate states to the Union while preserving states’ powers. Republicans in Congress hoped to severely punish the treason of the Confederate leaders and guarantee full civil and political rights for freedmen.

2. The purpose of the war was to restore the Union and its republican form of government—not to protect the rights of blacks.

3. He supported the Thirteenth Amendment because he saw the end of slavery as necessary to restore the Union. He also believed that ending slavery would enable the middle and working classes to displace the rule of the South’s planter aristocracy that he hated. Johnson maintained that it was improper to amend the Constitution when Southern states were not represented in Congress. In addition, he believed that each state should be able to determine who had the right to vote.

4. Students may suggest that we still have disputes about the proper distribution of power between state and national government, the proper division of power between executive and legislative, and the difficulties of race relations in America.

Handout B: Johnson’s First Annual Message to Congress, December, 1865

1. Permanence of the Union and importance of the Constitution: The Founders intended that the Union of the states would be permanent. The influence of Divine Providence was evident in the forming of the Constitution. The Constitution contains all the elements necessary for the preservation of the Union.

2. Relationship of the States to the central government: There is no power of the states to withdraw from the Union or to nullify the laws of the central government. The states and the central government need each other.

3. The right to vote: The President and Congress should leave each state free to determine the qualifications of its voters, just as the Founders did.

4. Amending the Constitution to abolish slavery: The Southern states can demonstrate their renewed loyalty to the Union by participating in the amendment process to abolish slavery. Ending slavery is a necessary step to unite the people.

5. Justice for the freedmen: The rights of the freedmen must be protected. This includes their rights to liberty and property, their right to work, and the right to a fair payment for their work.

6. Equal laws: The government must not provide preferential treatment for certain groups.

UNIT 4—ADVICE AND CONSENT: THE PRESIDENT AS CHIEF DIPLOMAT

Constitutional Connection: The President as Chief Diplomat

1. administrative or supervisory authority; The President is in charge of the federal government and the “buck stops” with his office.

2. consult with the Senate; The president must consult with the representatives of the people in his negotiations with other countries.

3. negotiate with representatives of foreign countries in order to write formal agreements; The President makes recommendations for official positions.

4. recommend a person for a position; The President has the power to recommend people to represent the United States.
5. assign or designate diplomatic officials; The President has the power to decide who will represent the US to other countries.
6. officially admit or recognize the dignitaries of foreign countries; It is at the President’s discretion to meet with other countries’ ambassadors.

**George Washington**

**Handout A: George Washington and Jay’s Treaty**

1. Since such roles are prohibited for Congressmen, it may have been inconsistent to allow Justices to serve in them; it might harm the Constitution’s principle of separation of powers.
2. It did not settle issues such as British recognition of America’s neutral trading rights, and a formal commitment by the British to stop the impressment of American sailors.
3. Students may say that he wanted the Senators to be able to make their decisions about international affairs without the distraction of public discussion, protest, and political influence. Accept reasoned answers.
4. He decided it was the best he could get, and feared that rejection would make it appear that the US favored France. It also accomplished his goal of avoiding war.

**Handout C: George Washington’s Message to the House**

2nd paragraph: I was at the Constitutional Convention and I understand what the Founders meant. The Constitution is very clear that the President is responsible for making treaties. Then the Senate has to approve them by a 2/3 vote.

4th paragraph: The Constitution does not give the House a role in treaty-making. The “boundaries” between the different departments in the Constitution are the separation of powers, and these must be maintained. The “duty of my office” is to uphold the Constitution, as shown by my oath of office.

**Handout D: Vocabulary and Context Questions**

Vocabulary
1. highest
2. relating to
3. manner of
4. solely

Context Questions
1. George Washington
2. 1796
3. The House of Representatives
4. It is a response to the House’s request for documents relating to Jay’s Treaty.

**Wilson and the Treaty of Versailles**

**Handout A: Woodrow Wilson, the Great War, and the Fourteen Points**

1. He hoped to make World War I “the war to end all wars.”
2. The League of Nations might require the US to commit troops to some foreign conflict without action by the US Congress.
3. Wilson was the first President to go overseas and participate personally in treaty negotiations; the President failed to consult the Senate in advance; Wilson delivered the Treaty to the Senate in person; Wilson embarked on a Presidential speaking tour to support the Treaty; it was the first Senate rejection of a peace treaty; it was the first attempt at a world-wide peace-keeping organization.
4. Wilson’s breaks with tradition; Republican victories in the congressional election of 1918; Wilson failed to consult Senators or take any Republicans with him; Wilson repeatedly refused to compromise with the Senate; Wilson lost the “solemn referendum.”
5. Accept reasoned answers.

**Handout C: Political Cartoon Analysis**

1. “Seein’ Things”; 1919. 2. A man in bed is scared of what he believes is a menacing, “horrible vulture” next to his bed. 3. A senator is overreacting to the League of Nations, believing himself to be a victim of a menacing scavenger; in reality the “horrible vulture” is a dove holding an olive branch—a symbol of peace. 4. The cartoonist seems to believe that the Senate has misunderstood
2. “The Lamb from the Slaughter” 1. The cartoon is not dated, but student should be able to deduce that it was drawn after the Treaty had been debated by the Senate Committee on Foreign Relations. 2. A well-dressed gentleman is escorting a man who has been badly injured out of the “operating room” for the Senate Committee on Foreign Relations. A gurney and a large knife are seen in the operating room. 3. A Senator—probably Henry Cabot Lodge—is responsible for “crippling” the Treaty of Versailles. 4. The cartoonist seems to believe that Lodge and the Senate Committee on Foreign Relations were wrong to “cut up” the peace treaty. The cartoon’s title, “The Lamb from the Slaughter,” further emphasizes the belief that the Senate has wrongly sacrificed the potential peace. 5. Accept reasoned answers. 6. The cartoon illustrates both principles, in that the Senate (Legislative Branch) is depicted exercising its power to approve, not approve, or approve with modifications, a treaty negotiated by the president (Executive Branch).

3. “Interrupting the Ceremony” 1. 1918. 2. As the Reverend asks if anyone can show “just cause” why the couple should not be joined in marriage, a man is bursting through a window, stopping the wedding. 3. The US Senate, Constitution in hand, is stopping the League of Nations from forever binding the US with foreign entanglements. 4. The cartoonist seems to believe that the constitutional rights of American citizens are “just cause” for preventing the foreign entanglements into which they expected the League of Nations would surely draw the US. 5. Accept reasoned answers. 6. The cartoon illustrates the principle of checks and balances, because the Senate is seen “checking” the President’s desire for the US to join the League of Nations.

Jimmy Carter

Handout A: President Carter and the Panama Canal Treaty

1. Carter believed strongly that America’s foreign affairs should reflect a new commitment to preserve human rights everywhere, correct injustices, and renounce American colonialism.

2. There were questions as to the validity of the 1904 Treaty. Panama’s ambassador, a French citizen, was not authorized to sign treaties on behalf of Panama. No Panamanian saw the treaty in advance. Panama’s government, which had approved US construction of a canal, objected bitterly to the terms of the treaty. Carter wanted to negotiate a treaty with Panama that he believed was just.

3. The President engaged in a massive public relations campaign to educate people about the treaty’s benefits. Carter sent a task force across the country to make more than 1,500 appearances.

4. Carter’s team kept track of conversations, rumors, and questions from Senators regarding the Treaty in a binder, quickly following up on each entry to win converts. He encouraged Senators to visit Panama and talk with Torrijos. Throughout the Senate debate, Carter personally tracked the progress of the Treaties, talking daily with Senators, answering questions and agreeing to various Senate modifications to save the Treaties.

5. Accept reasoned answers.

UNIT FIVE—THE ELECTORS SHALL MEET: ELECTING THE PRESIDENT

Constitutional Connection: Electing the President

1. They are selected in whatever manner a state’s legislature directs. Today, all states choose electors by popular vote, though the people vote for electors who are pledged to vote for a certain candidate.

2. They meet in their respective states.

3. Having the people vote for certain electors who they believe are particularly wise or informed will ensure that good candidates are chosen; Having electors meet in their own states will cut down on controversies; candidates will have to appeal to electors across the entire country, not just a single (and perhaps populous) state, in order to be elected President of the United States.

4. Accept reasoned answers.
John Quincy Adams

Handout A: John Quincy Adams and the Election of 1824

1. John Quincy Adams, Henry Clay, William Crawford, and Andrew Jackson
2. No candidate had a majority of electoral votes.
3. The House of Representatives decides the election with each state having one vote. The House of Representatives was considered the branch of the national government that was closest to the people. Representatives were elected directly by the people and their terms were only two years long.
4. He used his influence as Speaker of the House to win votes for Adams. He was charged with striking a “corrupt bargain” in return for a post as Secretary of State.
5. Accept reasoned answers.

Rutherford B. Hayes

Handout A: Rutherford B. Hayes and the Disputed Election of 1876

1. “The President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted:...”
2. Two conflicting sets of electoral votes were submitted by each of four states.
3. The two men essentially agreed on the need for civil service reform, more responsible economic policies, and, as Hayes put it, “an intelligent and honest administration of government, which will protect all classes of citizens” in the South.
4. Northerners, concerned about economic depression and the corruption in their own state governments, were not as concerned about the civil rights of Southern blacks. Southerners were tired of federal interference in their politics.
5. Throughout the South, Democrats used violence and intimidation to prevent blacks’ voting. Republicans used similar tactics to ensure that blacks voted Republican, and both sides bought votes.

Handout C: What Would You Do?

1. Students may suggest returning the votes to the states and having them sort out the controversy themselves; having the President appoint a special commission; counting the set of votes that was opened first; asking the Supreme Court to investigate the allegations of fraud; or other ideas.
2. Students may suggest that Congress had no other choice but to do something extra-constitutional as the Constitution did not address the current situation. Others may say that Congress could have inferred from other constitutional provisions what action would be appropriate, including the power of the President to appoint officers.
3. Accept reasoned answers.
4. Some students may say not at all. Others may suggest that the judicial branch could have judged the constitutionality of the special commission; the President could have issued an executive order; Congress could have returned the conflicting sets of votes to their respective states and had the state legislatures decide which votes were correct.

Handout D: Tilden’s Response to the Election

1. I knew that I had no documentation on which to claim the presidency.
2. I have the satisfaction of knowing the people preferred me as their President, without the difficulties and responsibilities of the job.
3. Everybody knows that the real winner of the people’s vote was deprived of the job, and the real loser of the people’s vote was placed in office.
4. We are right to be proud that our Constitution provides a method for peaceful change based on a vote of the people. The question now is whether this method will survive.
5. The question that remains after this election is the most basic and significant factor of self-government. The people must speak out against the way their will has been disregarded.
6. The people must develop a plan to prevent this from happening again.
7. Our people and our Constitution are strong enough to find a better way.
8. Some students might suggest that Tilden missed his own opportunity to correct an injustice by not being more vocal about what he saw as the rightful process—insisting that the election be decided in the House of Representatives. Other students may note that threats of violence were real and Tilden’s supporters would not have needed much encouragement to resort to bloodshed. President Grant indicated that he was willing to extend military control in the event of disorder following the election. Tilden’s calm and measured response allowed the crisis to pass.

1. Florida
2. The Florida Secretary of State had to accept counties’ election returns as late as November 26, 2000.
3. a state-wide manual recount
4. Bush argued that the varying county standards used to determine if votes would count violated the Fourteenth Amendment’s guarantee of equal protection of the laws. Gore argued that there was a uniform standard for counting votes across the state, and that it would actually be more uniform than standards used on Election Day.
5. The Court halted the statewide manual recount, holding that the lack of specific, uniform standards violated the Fourteenth Amendment.

Handout C: Document-Based Question
Document A: the legislature
Document B: States have to apply the law in the same way for everyone.
Document C: A vote can’t be declared invalid if it clearly shows the intent of the voter as defined by the canvassing board.
Document D: order steps that they believe are needed to investigate the allegations and right the wrongs
Document E: 1. November 14. 2. The first one says missing counties’ returns “shall” be ignored; the other says they “may” be ignored. 3. Because of Katherine Harris’s decision to ignore late returns. Both statutes say the Secretary can ignore late returns, but they differ on whether the Secretary must ignore them.
Document F: 1. The Secretary of State’s power to ignore late counties’ returns is not absolute because voting is the most important right protected by the Florida Constitution. 2. Accept reasoned answers. 3. Accept late returns as late as November 26.
Document G: The Florida Supreme Court ordered that contested ballots be examined “statewide” or, in every county.
Document H: Individuals are examining ballots; more than one person is involved in scrutinizing one ballot.

Document I: He argues that the Florida Supreme Court changed the meanings of words, and ordered recounts that would be unequal.
Document J: He argues that Florida does have a uniform standard, and furthermore it is the same standard used in ten or eleven other states.
Document K: 1. The Court reasoned that using different standards of counting votes in different counties violated the Fourteenth Amendment. The process failed to treat all votes—and therefore all voters—equally under the law. 2. Federal law requires states to resolve elector controversies before December 12. The Supreme Court ruled that no constitutional recount could be completed by that date.

Document L: The Supreme Court should defer to State Supreme Court interpretations of state law. The decision will cause people to lose confidence in the ability of judges to be unbiased.

Document M: Stopping the statewide manual recount is a greater injustice than any injustice done by applying different standards. The Court overlooks the manual recount’s ability to correct previous violations of equal protection.

Document N: The Supreme Court Justices are just as human—and fallible—as the recount teams in Florida.

Handout D: Organizing Documents
All documents could be used to support either side except:
   Support only Bush—Documents I, K
   Support only Gore—Documents J, L, M, and N
IN CONGRESS, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,

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

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. -- Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

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

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

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

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

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

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

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

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

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

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

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

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

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

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

For imposing Taxes on us without our Consent:

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

For transporting us beyond Seas to be tried for pretended offences

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

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

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

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

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

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

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

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

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

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

[The 56 signatures on the Declaration]
<table>
<thead>
<tr>
<th>State</th>
<th>Signers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgia</td>
<td>Button Gwinnett</td>
</tr>
<tr>
<td></td>
<td>Lyman Hall</td>
</tr>
<tr>
<td></td>
<td>George Walton</td>
</tr>
<tr>
<td></td>
<td><strong>North Carolina</strong></td>
</tr>
<tr>
<td></td>
<td>Joseph Hewes</td>
</tr>
<tr>
<td></td>
<td>William Hooper</td>
</tr>
<tr>
<td></td>
<td>John Penn</td>
</tr>
<tr>
<td></td>
<td><strong>South Carolina</strong></td>
</tr>
<tr>
<td></td>
<td>Thomas Heyward, Jr.</td>
</tr>
<tr>
<td></td>
<td>Thomas Lynch, Jr.</td>
</tr>
<tr>
<td></td>
<td>Arthur Middleton</td>
</tr>
<tr>
<td></td>
<td>Edward Rutledge</td>
</tr>
<tr>
<td></td>
<td><strong>Maryland</strong></td>
</tr>
<tr>
<td></td>
<td>Charles Carroll of Carrollton</td>
</tr>
<tr>
<td></td>
<td>Samuel Chase</td>
</tr>
<tr>
<td></td>
<td>William Paca</td>
</tr>
<tr>
<td></td>
<td>Thomas Stone</td>
</tr>
<tr>
<td></td>
<td><strong>Virginia</strong></td>
</tr>
<tr>
<td></td>
<td>Carter Braxton</td>
</tr>
<tr>
<td></td>
<td>Benjamin Harrison</td>
</tr>
<tr>
<td></td>
<td>Francis Lightfoot Lee</td>
</tr>
<tr>
<td></td>
<td>Richard Henry Lee</td>
</tr>
<tr>
<td></td>
<td>Thomas Jefferson</td>
</tr>
<tr>
<td></td>
<td>Thomas Nelson, Jr.</td>
</tr>
<tr>
<td></td>
<td>George Wythe</td>
</tr>
<tr>
<td></td>
<td><strong>Pennsylvania</strong></td>
</tr>
<tr>
<td></td>
<td>George Clymer</td>
</tr>
<tr>
<td></td>
<td>Benjamin Franklin</td>
</tr>
<tr>
<td></td>
<td>Robert Morris</td>
</tr>
<tr>
<td></td>
<td>John Morton</td>
</tr>
<tr>
<td></td>
<td>George Ross</td>
</tr>
<tr>
<td></td>
<td>Benjamin Rush</td>
</tr>
<tr>
<td></td>
<td>James Smith</td>
</tr>
<tr>
<td></td>
<td>George Taylor</td>
</tr>
<tr>
<td></td>
<td>James Wilson</td>
</tr>
<tr>
<td></td>
<td><strong>Delaware</strong></td>
</tr>
<tr>
<td></td>
<td>Thomas McKean</td>
</tr>
<tr>
<td></td>
<td>George Read</td>
</tr>
<tr>
<td></td>
<td>Caesar Rodney</td>
</tr>
<tr>
<td></td>
<td><strong>New Jersey</strong></td>
</tr>
<tr>
<td></td>
<td>Abraham Clark</td>
</tr>
<tr>
<td></td>
<td>John Hart</td>
</tr>
<tr>
<td></td>
<td>Francis Hopkinson</td>
</tr>
<tr>
<td></td>
<td>Richard Stockton</td>
</tr>
<tr>
<td></td>
<td>John Witherspoon</td>
</tr>
<tr>
<td></td>
<td><strong>New York</strong></td>
</tr>
<tr>
<td></td>
<td>William Floyd</td>
</tr>
<tr>
<td></td>
<td>Francis Lewis</td>
</tr>
<tr>
<td></td>
<td>Philip Livingston</td>
</tr>
<tr>
<td></td>
<td>Lewis Morris</td>
</tr>
<tr>
<td></td>
<td><strong>New Hampshire</strong></td>
</tr>
<tr>
<td></td>
<td>Josiah Bartlett</td>
</tr>
<tr>
<td></td>
<td>Matthew Thornton</td>
</tr>
<tr>
<td></td>
<td>William Whipple</td>
</tr>
<tr>
<td></td>
<td><strong>Massachusetts</strong></td>
</tr>
<tr>
<td></td>
<td>Samuel Adams</td>
</tr>
<tr>
<td></td>
<td>John Adams</td>
</tr>
<tr>
<td></td>
<td>Elbridge Gerry</td>
</tr>
<tr>
<td></td>
<td>John Hancock</td>
</tr>
<tr>
<td></td>
<td>Robert Treat Paine</td>
</tr>
<tr>
<td></td>
<td><strong>Rhode Island</strong></td>
</tr>
<tr>
<td></td>
<td>William Ellery</td>
</tr>
<tr>
<td></td>
<td>Stephen Hopkins</td>
</tr>
<tr>
<td></td>
<td><strong>Connecticut</strong></td>
</tr>
<tr>
<td></td>
<td>Samuel Huntington</td>
</tr>
<tr>
<td></td>
<td>Roger Sherman</td>
</tr>
<tr>
<td></td>
<td>William Williams</td>
</tr>
<tr>
<td></td>
<td>Oliver Wolcott</td>
</tr>
</tbody>
</table>
We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I

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

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

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

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct.

The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

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

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

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

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

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

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

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

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

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

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

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

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

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

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

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

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

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

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

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

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

To borrow money on the credit of the United States;

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

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

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

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

To establish post offices and post roads;

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

To constitute tribunals inferior to the Supreme Court;

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

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

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

To provide and maintain a navy;

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

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

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

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

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

The privilege of the writ of habeas corpus shall not be suspended, unless 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 impost or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

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

Article II

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

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

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

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

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

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

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, 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 may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

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

Article III

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

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

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

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

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

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

Article IV

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

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.

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,

G. Washington-Presidt. and deputy from Virginia
New Hampshire: John Langdon, Nicholas Gilman
Massachusetts: Nathaniel Gorham, Rufus King
Connecticut: Wm: Saml. Johnson, Roger Sherman
New York: Alexander Hamilton
New Jersey: Wil: Livingston, David Brearly, Wm. Paterson, Jona: Dayton
Delaware: Geo: Read, Gunning Bedford jun, John Dickinson, Richard Bassett, Jaco: Broom
Maryland: James McHenry, Dan of St Thos. Jenifer, Dani Carroll
Virginia: John Blair—, James Madison Jr.
South Carolina: J. Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler
Georgia: William Few, Abr Baldwin

Amendments to the Constitution

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.

**Amendment XI**
The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

**Amendment XII**
1. The Electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; - The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, 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. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President.

3. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such numbers be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

**Amendment XIII**
1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

**Amendment XIV**
1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws.
2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

2. The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII

1. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislatures.

2. 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.

3. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII

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.

2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XIX

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XX

1. The terms of the President and the Vice-President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.
3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice-President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice-President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice-President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

4. The Congress may by law provide for the case of the death of any of the persons from whom the House of representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI
1. The Eighteenth article of amendment to the Constitution of the United States is hereby repealed.
2. The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.
3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII
1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more that two years of a term to which some other person was elected President shall be elected to the office of President more than once.
2. But this Article shall not apply to any person holding the office of President when this Article was proposed by Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.
3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII
1. The District constituting the seat of Government of the United States shall appoint in such manner as Congress may direct:
2. A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.
3. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV
1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay poll tax or any other tax.
2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV
1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.
2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take the office upon confirmation by a majority vote of both houses of Congress.
3. Whenever the President transmits to the President Pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice
President as Acting President.

4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmits to the President Pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

5. Thereafter, when the President transmits to the President Pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmits within four days to the President Pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

**Amendment XXVI**

The right of citizens of the United States, who are 18 years of age or older, to vote shall not be denied or abridged by the United States or any state on account of age.

The Congress shall have power to enforce this article by appropriate legislation.

**Amendment XXVII**

No law, varying the compensation for services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.
T

he Conventions of a number of the States having, at the time of adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, and as extending the ground of public confidence in the Government will best insure the beneficent ends of its institution;

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, that the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States; all or any of which articles, when ratified by three-fourths of the said Legislatures, to be valid to all intents and purposes as part of the said Constitution, namely:

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.
# National Standards Correlations

<table>
<thead>
<tr>
<th>President</th>
<th>CCE (9-12)</th>
<th>NCHS (5-12)</th>
<th>NCSS</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Adams</td>
<td>IA3, IB2, IIB4, VB1, VB2, VB5</td>
<td>Era 3, Standards 3B and 3D</td>
<td>Strands 2, 5, 6, and 10</td>
</tr>
<tr>
<td>John Quincy Adams</td>
<td>ID3, IID1, IIIE4, VB2</td>
<td>Era 3, Standard 3A</td>
<td>Strands 2, 5, 6, and 10</td>
</tr>
<tr>
<td>James Buchanan</td>
<td>IIA2, IIC1, IIC2, IID1, IID3, IID4, IIIA1, IIIA2, IIIC1, IID1, VA1</td>
<td>Era 5, Standard 1C</td>
<td>Strands 1, 2, 5, 6, and 10</td>
</tr>
<tr>
<td>George W. Bush</td>
<td>IIA1, IIC2, IIIA1, IIIB1, IIIC1, IID2, VB2</td>
<td>Era 10, Standard 1C</td>
<td>Strands 2, 5, 6, and 9</td>
</tr>
<tr>
<td>Jimmy Carter</td>
<td>IIIA1, IIIB2, IVB1, IVB2, IVB3, IVC2</td>
<td>Era 10, Standard 1C</td>
<td>Strands 2, 5, 6, and 9</td>
</tr>
<tr>
<td>Rutherford B. Hayes</td>
<td>IID3, IID4, IIIA1, IIIB2, IIIE1, VD4</td>
<td>Era 5, Standards 3A and 3C</td>
<td>Strands 2, 5, 6, and 10</td>
</tr>
<tr>
<td>Andrew Johnson</td>
<td>IIA2, IIC1, IIC2, IID1, IID3, IID4, IIIA1, IIIA2, IIIC1, IID1, VA1</td>
<td>Era 5, Standard 1C</td>
<td>Strands 1, 2, 5, 6, and 10</td>
</tr>
<tr>
<td>Lyndon Johnson and Ronald Reagan</td>
<td>IB1, IIA1, IIC1, IID5, IIIA1, IIIA2</td>
<td>Era 10, Standard 2A</td>
<td>Strands 2, 5, and 6</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>President</th>
<th>CCE (9-12)</th>
<th>NCHS (5-12)</th>
<th>NCSS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abraham Lincoln and Emancipation</td>
<td>IID1, IIIA1</td>
<td>Era 5, Standard 2A</td>
<td>Strands 2, 5, 6, and 10</td>
</tr>
<tr>
<td>Abraham Lincoln and Habeas Corpus</td>
<td>IA3, IB2, IIB4, VB1, VB2, VB5</td>
<td>Era 5, Standard 2B</td>
<td>Strands 2, 5, 6, and 10</td>
</tr>
<tr>
<td>James Madison</td>
<td>IB1, IIA1, IIC1, IIIA1, IIIA2</td>
<td>Era 3, Standard 3A</td>
<td>Strands 2, 5, and 6</td>
</tr>
<tr>
<td>Theodore Roosevelt</td>
<td>IB1, IIA1, IIC1, IIIA1, IIIA2</td>
<td>Era 7, Standards 1B and 2A</td>
<td>Strands 2, 5, and 6</td>
</tr>
<tr>
<td>George Washington</td>
<td>IIIA1, IIIB2, IVB1, IVB2, IVB3, IVC2</td>
<td>Era 3, Standard 1C</td>
<td>Strands 2, 5, 6, and 9</td>
</tr>
<tr>
<td>Woodrow Wilson and the Espionage Act</td>
<td>IA3, VB1, VB2, VB5</td>
<td>Era 7, Standards 2B and 2C</td>
<td>Strands 2, 5, 6, and 10</td>
</tr>
<tr>
<td>Woodrow Wilson and the Treaty of Versailles</td>
<td>IIIB1, IIIB2, IVB1, IVB2, IVB3, IVC2</td>
<td>Era 7, Standard 2B</td>
<td>Strands 2, 5, 6, and 9</td>
</tr>
</tbody>
</table>
A SPECIAL THANKS TO
FIELD TESTING TEACHERS

Carrie Assell
Campolindo High School
Moraga, California

Suzanne Bailey
Virgil Grissom High School
Huntsville, Alabama

Troy Ketch
South County High School
Springfield, Virginia

Ruth Lewis
Richwoods High School
Peoria, Illinois

Suzanne V. Loud
W.F. Kaynor Technical High School
Waterbury, Connecticut

Jan Loyd
Cabot Junior High South
Cabot, Arkansas

Jill McKelvey
Benjamin Logan High School
Bellefontaine, Ohio

Joan W. Musbach
Ladue School District
St. Louis County, Missouri

David Sahr
National Cathedral School
Washington, DC

Beth Sharp
St. Thomas Aquinas High School
Ft. Lauderdale, Florida

Susan Strumpf
Viewpoint School
Calabasas, California

Tosha Tillotson
Cristo Rey High School
Sacramento, California

Stephen Venezia
Marblehead High School
Marblehead, Massachusetts

**IMAGE CREDITS**

All images in this publication are from the collections of the Library of Congress and in the public domain except:

*(cover)* John Adams: White House Historical Association (White House Collection); James Madison: White House Historical Association (White House Collection); George W. Bush: White House Photo; Theodore Roosevelt: White House Historical Association (White House Collection); Woodrow Wilson: White House Historical Association (White House Collection); Ronald Reagan: White House Historical Association (White House Collection); George Washington: White House Historical Association (White House Collection); Abraham Lincoln: White House Historical Association (White House Collection); White House photo: courtesy Yee Ying; Constitution: courtesy National Archives

*(4)* White House photo: courtesy Yee Ying

*(27)* White House photo: courtesy Yee Ying

*(113)* “Seein’ Things”: courtesy Oregon State Archives; “Interrupting the Ceremony”: courtesy Ohio State University Cartoon Research Library

*(151)* “Election Workers Check a Ballot in Broward Florida”: courtesy Reuters/CORBIS

*(155)* "Bush v. Gore": courtesy Stu’s Views