PRESIDENTS & THE CONSTITUTION

A program of the Bill of Rights Institute
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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.
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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 “Election 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.

Victoria Hughes
President
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>
</table>
| 1. Article I, Section 7  
...[I]f he approve he shall sign [a bill], but if not he shall return it... | |
| 2. Article II, Section 1  
The executive power shall be vested in a President of the United States of America.... | |
| 3. Article II, Section 1  
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.” | |
| 4. Article II, 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... | |
| 5. Article II, Section 3  
[H]e shall take care that the laws be faithfully executed... | |
| 6. Article II, Section 4  
The President ... shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. | |
The framers of the Constitution believed that the greatest safeguard against government tyranny was to limit the powers of government by specifically enumerating them. That is why the powers of Congress are limited to those enumerated in Article I of the Constitution and those “necessary and proper” for implementing them. Article I vests in Congress only those legislative powers “herein granted.” No such limits appear in Article II which vests the President with the executive power. The limiting phrase “herein granted” do not appear. In view of the Founders’ fears of tyranny it is clear that the absence of those two words was not intended to let the president do whatever he wanted. But what limits did they mean to impose? Historically, disputes over the extent of executive power have erupted in two different ways. One pits the President against Congress. Did he usurp power that the Constitution gives to the other branch? The other unites the President and the Congress against a strict construction of the Constitution. Are they conspiring together to obtain powers for the federal government that the Constitution denies them?

A major dispute of the first kind erupted during the first presidential term. In 1793 George Washington issued a Neutrality Proclamation declaring that the United States would refrain from taking sides in the war between Britain and France. Supporters of France, including James Madison and Thomas Jefferson, denounced the Proclamation not only because they wanted to side with France but because they claimed that the President had no authority to issue such a proclamation. As Commander in Chief, he was responsible for carrying out the orders of Congress regarding war and peace. Washington's supporters, especially Alexander Hamilton, countered that the Constitution only gave Congress the power to declare war. Congress was restricted to that enumerated power. The responsibility to preserve peace, unless expressly propelled into war by Congress, was therefore the responsibility of the Executive. Washington prevailed. Congress did not repudiate his Proclamation.

Jefferson’s strict view of the federal government’s enumerated powers was tested when he became President. The Constitution does not specifically authorize the federal government to acquire new territory or to incorporate such territory into the Union; nonetheless, President Jefferson’s Louisiana Purchase doubled the size of the Union and Congress approved it. Jefferson himself believed that a constitutional amendment was needed.
to enable the US to make the Purchase and incorporate the new territories. He even wrote a draft for such an amendment. But his advisors argued that speed was of the essence: Emperor Napoleon of France might change his mind about selling, and it might take years for a sufficient number of states to ratify the amendment. Jefferson was persuaded that the power to negotiate treaties that Article II granted him was sufficient to enable him, with congressional approval, to purchase the territory. The more difficult question of how to incorporate it into the Union could then be resolved in a more leisurely fashion.

After Congress approved the Purchase, John Quincy Adams proposed a constitutional amendment enabling the government to incorporate new territory in the Union, but Jefferson’s allies in Congress rejected the idea. Jefferson believed the Purchase was key to creating great new opportunities for Americans. Because the Constitution established a process for creating new states, the acquired territories would not need to be ruled from Washington—they would become sovereign states of their own. In the end, Jefferson did not choose to endanger this vision by subjecting it to the uncertainties of the constitutional amendment process.

In contrast to Jefferson, President Grover Cleveland chose not to cooperate with Congress in going beyond what he considered to be the strictly enumerated powers of the federal government. In 1887, he vetoed a bill to appropriate $10,000 to buy seeds to give to farmers in Texas whose crops had failed due to severe and prolonged droughts. In many respects this bill was unexceptional. Article II of the Constitution grants Congress the power to tax and spend, thus Congress clearly had the power to appropriate the $10,000 sum. But the Constitution did not give the federal government power to aid individuals. In Cleveland’s view, Congress’s desire to help Texas farmers had blinded it to the need to accomplish a deeper purpose: encouraging self-reliance and mutual aid by minimizing government intrusion.

In responding to the Great Depression, Herbert Hoover adopted a strict and Franklin Delano Roosevelt a loose construction of the powers of Congress. Hoover was far less absolutistic than Grover Cleveland had been, but he did not believe that the emergency conditions that the Great Depression imposed allowed him to ignore what he understood to be the constitutional limits on federal power. He supported voluntary forms of business cooperation with the government providing guidance and some forms of coordination, but he rejected efforts to endow these voluntary bodies with any law-making or law-enforcing powers. He also rejected the establishment of any new executive agency that would claim emergency powers not specified in the Constitution. His major initiatives rested on enumerated powers found in Article I: foreign commerce, and the banking power derived from the taxing and spending clause. He signed the Smoot Hawley Tariff Bill designed to protect American farmers against competition from foreign imports and the statute establishing the Reconstruction Finance Corporation to provide emergency loans to failing major financial and industrial corporations. But he firmly opposed providing direct financial help to individuals for much the same reasons that Cleveland would not help Texas farmers. The Constitution provided no such authority and the receipt of such unearned aid would undermine individual responsibility and initiative.

Roosevelt took the opposite tack. In his First Inaugural Address, he announced that he...
would treat the task of economic recovery “as we would treat the emergency of a war” and he urged Congress to grant him “Executive power to wage a war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe.” But FDR rarely had to invoke emergency powers because Congress supported his loose constitutional constructions.

The massive intervention of the New Deal into virtually all sectors of the economy—the granting of new rights to labor unions, the dispensing of relief aid to individuals, and the establishment of old age pensions—were based on loose construction of the Commerce Clause, the Necessary and Proper Clause and the General Welfare clauses all found in Article I. FDR interpreted “commerce” to mean almost any form of production, sale, or transport of goods or services that might in any way influence economic conditions in more than one state. For example, a federal law to regulate relations between labor and management was justified on the grounds that conditions of employment had an indirect, but nonetheless meaningful, impact on commerce.

Prior to the New Deal, the general welfare clause had never been invoked to justify a new law. The consensus of judges and law makers was that it had little meaning since it was followed by a specific enumeration of the powers of Congress. Why bother to enumerate powers if the Congress can simply act in the general welfare? FDR took the opposite view. Some very important New Deal policies were based on the claim that the federal government had broad authority to provide for the “general welfare.” In a similar vein, the Necessary and Proper Clause was taken to mean that a very wide variety of novel interventions by government into the economy were constitutional if they were valuable tools for serving the general welfare. By the 1940s, FDR and the Supreme Court were treating the commerce power as a power to preserve the health and vitality of the national economy; hence, the extension to wage and hours legislation, working conditions etc.

FDR believed that the new economic conditions brought about by the new industrial economy demanded the establishment of a set of positive economic rights — most importantly the right to economic security in one’s old age — to supplement the political rights propounded in the Declaration of Independence and secured in the Constitution. Political rights placed limits on what government could do. In FDR’s view, economic rights demanded positive action from government and, therefore, required a loose construction of the Constitution to enable government to secure them.

The President is sometimes called “Chief Legislator” in that he can use what Theodore Roosevelt called the “bully pulpit” to advocate for what he believes will be beneficial laws. The President’s understanding of the Constitution, therefore, will influence not only the degree to which he seeks to actively promote laws, but also the kinds of regulations he will propose.

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.
President Thomas Jefferson, elected at the end of the Quasi-War with France, faced domestic unease when Spain returned Louisiana to France at Napoleon’s insistence. Aware of the strategic importance of New Orleans and wary of Napoleon’s desire to build an empire in North America, Jefferson sent negotiators to France to purchase land east of the Mississippi. As time went on, though, France had other priorities and in the spring of 1803 offered the United States the whole Louisiana territory—more than 800,000 acres—for $15 million. Jefferson had always feared the costs of loose construction of the powers delegated to the national government in the Constitution, and the Constitution did not provide for the incorporation of new lands into the US. Jefferson urged bringing the issue to the people to approve with a constitutional amendment, but a special session of Congress disregarded his draft amendment. The Senate ratified the Louisiana Purchase Treaty in October of 1803. While Jefferson did his best to follow what he believed was proper constitutional procedure, not enough of his contemporaries agreed with him and he eventually assented.

Objectives

Students will:

- Understand the events leading up to the Louisiana Purchase.
- Analyze Thomas Jefferson’s views of the Purchase’s constitutionality.
- Assess the constitutionality of the Louisiana Purchase.
- Appreciate Jefferson’s dilemma between expedience and constitutional scruples.

Critical Engagement Question

Why did President Thomas Jefferson, an advocate of strict construction of federal power, approve of the Louisiana Purchase?

Materials

- Handout A: Thomas Jefferson and the Louisiana Purchase
- Handout B: Jefferson’s Views on the Louisiana Purchase

Background/Homework

Have students read Handout A: Thomas Jefferson and the Louisiana Purchase and answer the questions.

Warm-Up [15 minutes]

A. Divide the class into six groups and give each group a quotation card from Handout B: Jefferson’s Views on the Louisiana Purchase.

B. Have students read and discuss the main ideas of their quotation. They should then write the quotation in their own words on the card.
**Activity [ 25 minutes ]**

A. On the board, draw a long horizontal line to form the basis of a continuum. On one side of the line write “The Louisiana Purchase DOES require a constitutional amendment.” On the other side, write “The Louisiana Purchase DOES NOT require a constitutional amendment.”

B. Ask a spokesperson from the group with the first quotation to read it aloud, and then put it in their own words. Go over the meaning of Jefferson’s statement.

C. Ask a different volunteer from that group to take their quotation card and place it on the continuum to demonstrate where Jefferson’s view would fall.

D. Continue with all the groups until all cards have been placed.

E. Debrief the class on what they observe about the changes on Jefferson’s views. Then, using the Answer Key, rearrange the quotations to reflect chronology and debrief again.

**Wrap-Up [ 10 minutes ]**

As a large group, discuss the evolution of Thomas Jefferson’s views on the necessity of a constitutional amendment to authorize the Louisiana Purchase.

- Did his views actually change?
- Given the force of Jefferson’s earlier statements about the importance of holding the national government to the exercise of its enumerated powers only, would it be fair to call him a “flip-flopper”? Why or why not?

**Homework**

Have one half of the class draw a political cartoon that might have been published by a Federalist newspaper on Jefferson’s acceptance of the Louisiana Purchase without a constitutional amendment. The other half should draw a cartoon that might have been published by a Republican paper. All cartoons should feature the Constitution as a graphic element. Have students post their cartoons around the room and give students time to view them all.

**Extensions**

While many historians credit Jefferson’s vision and diplomatic skills in securing the Louisiana Purchase, others give more credit to mosquitoes—arguing that Napoleon simply had to change his priorities after losing too many soldiers in the Caribbean to malaria. Have students conduct additional research about the Louisiana Purchase and Jefferson’s involvement and write a position paper in which they convince their reader that Jefferson does or does not deserve the credit for the Louisiana Purchase. Students can begin their research at:

- http://avalon.law.yale.edu/subject_menus/fr1803m.asp
THOMAS JEFFERSON AND THE LOUISIANA PURCHASE

Thomas Jefferson accomplished many of his proudest achievements before becoming President. In 1776, he authored the Declaration of Independence. Three years later he wrote the Virginia Statute for Religious Liberty which laid groundwork for the First Amendment’s protection of religious freedom. By the end of the century, Jefferson was emerging as the leader of one of the two first political parties in the US.

The Republicans, led by Jefferson, argued for strict construction of the powers given to the national government in the Constitution. This meant they believed its powers should be interpreted in narrow, limited terms. They believed power should be de-centralized, with most powers remaining with state and local governments. Federalists like Washington and John Adams advocated a stronger central government. Jefferson was elected President in 1801, in an election where many Federalists were turned out of national offices.

The US and Napoleon

France had given up all of its territory in North America at the end of the French and Indian War (1763). But Napoleon had plans to re-establish the French empire in North America. In 1801, America learned that Spain had agreed to return Louisiana to France. Many in the US were uneasy. President Jefferson shared that unease. He instructed US Minister to France Robert Livingston to try to buy New Orleans, but Napoleon refused.

Jefferson had always looked upon France as a friend in the world, but he knew this was a potential crisis. Almost half the goods exported from the US were shipped through New Orleans. Jefferson wrote in April of 1802, “There is on the globe one single spot, the possessor of which is our natural and habitual enemy. It is New Orleans.” The new nation depended on the port city for its economic survival.

In early 1803, Jefferson appointed James Monroe as a special envoy to France. Monroe and Livingston would try again to buy land east of the Mississippi or in New Orleans itself, or, if all else failed, to secure US access to the river. Jefferson authorized them to negotiate up to $10 million. He emphasized how important their mission was: “Every eye in the US is now fixed on this affair with Louisiana. Perhaps nothing since the Revolutionary War has produced more uneasy sensations through the body of the nation.”

Monroe arrived in France in April of 1803 and quickly learned that France had shifted its priorities. Napoleon had given up his desire to recreate an empire in North America. France offered the US the entire Louisiana territory—more than 800,000 acres from Louisiana to the Rockies and beyond—for $15 million. The two American ministers seized the opportunity, going beyond their mandate. They negotiated a purchase treaty and returned to the US in time for an announcement to be made on July 4, 1803.

Jefferson and the Constitution

The Louisiana Purchase Treaty would not be final until it was ratified by the Senate, funded by the House of Representatives, and signed by the President. While the incorporation of these new lands into the United States was
a momentous opportunity, Jefferson had reservations about its constitutionality.

Jefferson had always stated his strong belief that the federal government’s powers should be interpreted strictly. In 1791, nearly a decade earlier, he had argued, “To take a single step beyond the boundaries thus specifically drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition.” In 1798, Jefferson had argued that, “Whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force.”

The Constitution was at the center of Jefferson’s analysis of the Louisiana Purchase. Jefferson knew that Articles I and II gave the Executive and Legislative Branches roles in treaty-making. Since the states were forbidden by the Constitution from entering into treaties, and the people had no way of doing so, Jefferson reasoned that only the federal government could make treaties to acquire new land.

But the processes for holding and incorporating those foreign lands were another matter. Article IV of the Constitution said new states could be added, but made no provision for taking on foreign territories. Jefferson argued that a constitutional amendment was needed. He wrote in 1803, “The Constitution ... has not given [the General Government] power of holding foreign territory, and still less of incorporating it into the Union. An amendment of the Constitution seems necessary for this.”

**Constitutional Amendment?**

Jefferson drafted an amendment that would authorize the purchase of Louisiana retroactively. His draft read in part, “Louisiana as ceded by France to the United States is made a part of the United States. Its white inhabitants shall be citizens and stand, as to their rights and-obligations, on the same footing with the citizens of the United States ...”

A special session of Congress disregarded his draft, however, and the Senate ratified the treaty in October of 1803.

Jefferson may have had to compromise his most sacredly-held principles for the Louisiana Purchase to go forward. But he later described the Purchase as a “great achievement.” He wrote in 1810, “It is incumbent on those who accept great charges to risk themselves on great occasions.” President Thomas Jefferson doubled the size of the United States and set a precedent for the acquisition of new lands through means other than war and conquest.

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**Critical Thinking Questions**

1. How did Republicans believe the powers of the national government should be interpreted?
2. Why was New Orleans important to the American economy?
3. What did Jefferson instruct James Monroe and Robert Livingston to do on their diplomatic mission in 1803?
4. What were Jefferson’s concerns about the constitutionality of the Louisiana Purchase Treaty?
5. One historian has described the Louisiana Purchase as raising “in Jefferson’s mind a conflict between constitutional scruples and expedience.” What did he mean?
1

**Thomas Jefferson to John Dickinson**

The General Government has no powers but such as the Constitution gives it. ...It has not given it power of holding foreign territory, and still less of incorporating it into the Union. An amendment of the Constitution seems necessary for this. In the meantime we must ratify and pay our money, as we have treated, for a thing beyond the Constitution, and rely on the nation to sanction an act done for its great good, without its previous authority.

*In your own words:*

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

2

**Thomas Jefferson to Senator John C. Breckenridge**

This treaty must of course be laid before both Houses, because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying & paying for it... But I suppose they must then appeal to the nation for an additional article to the Constitution, approving and confirming an act which the nation had not previously authorized. ...The Legislature ... must ... throw themselves on their country for doing for them unauthorized what we know they would have done for themselves had they been in a situation to do it. It is the case of a guardian investing the money of his ward in purchasing an important adjacent territory; and saying to him when of age, “I did this for your good.”

*In your own words:*

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________
Thomas Jefferson to Wilson Cary Nicholas

I am aware of the force of the observations you make on the power given by the Constitution to Congress to admit new states into the Union, without restraining the subject to the territory then constituting the US. But when I consider that the limits of the US are precisely fixed ... [and] that the Constitution expressly declares itself to be made for the US, I cannot help believing the intention was to permit Congress to admit into the Union new states which should be formed out of the territory for which, and under whose authority alone, they were then acting. I do not believe it was meant that they might receive England, Ireland, Holland, etc. into it, which would be the case on your construction.

_In your own words:_

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

Thomas Jefferson to Wilson Cary Nicholas

When an instrument admits two constructions, the one safe, the other dangerous, the one precise, the other indefinite, I prefer that which is safe and precise. I had rather ask an enlargement of power from the nation, where it is found necessary, than to assume it by a construction which would make our powers boundless. Our peculiar security is in possession of a written Constitution. Let us not make it a blank paper by construction.

_In your own words:_

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________
Thomas Jefferson to Wilson Cary Nicholas

I confess, then, I think it important in the present case to set an example against broad construction by appealing for new power to the people. If, however, our friends shall think differently, certainly I shall acquiesce with satisfaction, confiding that the good sense of our country will correct the evil of construction when it shall produce ill effects.

In your own words:

________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________

Thomas Jefferson’s Third Annual Message to Congress

The property and sovereignty of all Louisiana… have on certain conditions been transferred to the United States by instruments bearing date the 30th of April last. When these shall have received the constitutional sanction of the Senate, they will without delay be communicated to the Representatives also, for the exercise of their functions, as to those conditions which are within the powers vested by the Constitution in Congress. The property and sovereignty of the Mississippi and its waters secure an independent outlet for the produce of the western States..., the fertility of the country, ... promise in due season important aids to our treasury, an ample provision for our posterity, and a wide-spread field for the blessings of freedom and equal laws. With the wisdom of Congress it will rest to take those … measures which may be necessary for the immediate occupation and temporary government of the [Louisiana Purchase territory]; for its incorporation into our union.

In your own words:

________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________

________________________________________________________________________________________
Overview

Cleveland understood his constitutional legislative responsibility as preventing harmful bills from becoming law, rather than promoting what he saw as beneficial ones. Using the veto, Cleveland stopped the federal government from taking on what he saw as a “paternal” role toward citizens, whether that role came in the form of excessive or fraudulent pension payouts, or in proposed relief for drought-stricken farmers in Texas. These principled stances brought him many enemies, but he did not waver from his commitment to exercising only the powers warranted by the Constitution. One American author said that Cleveland’s “patriotic virtues have won for [him] the homage of half a nation and the enmity of the other half. This places [his] character upon a summit as high as Washington’s.”

Objectives

Students will:

- Understand Grover Cleveland’s philosophy of limited government.
- Analyze Cleveland’s actions as President in light of the Constitution.
- Evaluate the prudence of Cleveland’s veto of the Texas Seed Bill.
- Assess whether Cleveland deserved the “homage” or the “enmity” of the nation.

Critical Engagement Question

Why would the President adhere to the Constitution during a crisis?

Materials

- Handout A: Grover Cleveland and the Texas Seed Bill Veto
- Handout B: Cleveland’s Veto Message
- Handout C: Document Guide

Background/Homework

Have students read Handout A: Grover Cleveland and the Texas Seed Bill Veto and answer the questions.

Warm-Up [10 minutes]

A. Ask students to brainstorm wide-scale crises and disasters in American history such as Hurricane Katrina, the 2001 terrorist attacks, floods, earthquakes, etc.

B. Next, brainstorm private and public ways that our society has responded to disasters, e.g. individuals offering assistance, private charities and organizations like the Red Cross, state or federal National Guard mobilization, etc.
Activity [30 minutes]

A. Ask students to recall the purpose of the Texas Seed Bill.
   - What did they think when they learned that Cleveland had vetoed it?
   - Was Cleveland choosing between adhering to the Constitution and relieving human suffering? Why or why not?

B. Divide the class into pairs and have students read Handout B: Cleveland’s Veto Message. They should complete Handout C: Document Guide as they read.

C. After students have had time to read the document and answer the vocabulary, context, and comprehension questions on Handout C, read the document aloud one paragraph at a time. For each paragraph, ask students to summarize Cleveland’s ideas in their own words.

D. As a large group, discuss the following questions:
   - What was Cleveland’s constitutional objection to the Texas Seed Bill?
   - What was his other major objection to it?
   - Should Cleveland be admired for this veto? Why or why not?

Wrap-Up [10 minutes]

Have students discuss the critical thinking questions on Handout C in their pairs before reconvening the class for large group sharing.
   - How much more involved in direct assistance has the government become since Grover Cleveland was President?
   - What are the advantages and disadvantages of this?
   - Are there some situations where government assistance not only discourages private assistance, but actually forbids it?

Homework

Have students write a newspaper obituary for President Cleveland in which they reference some of the major events of his Presidency and his responses to them.

Extensions

Have students read the Founders quotations on government and direct assistance found at www.ArticleII.org/units/FedPower. Keeping in mind that the Founders were individuals and were rarely of one mind on any specific subject, have them write a one or two sentence summary of the Founders’ views on the role of government in providing direct assistance to citizens. They should then select one quotation and write a one-paragraph response.
As soon as he took office, President Cleveland demonstrated his commitment to an efficient government which granted special favors to no one. He refused to follow the “Spoils System” (awarding jobs to political supporters). He supported the Pendleton Bill, a federal law requiring certain government jobs to be based on merit and not just political party loyalty. Cleveland changed the description of more than eleven thousand jobs so that those positions would be subject to this law.

Cleveland worked to make the federal government more efficient as well as less partisan. He canceled orders from Navy contractors who were producing outdated vessels. He investigated railroad companies that had been given federal land, but that had not lived up to the terms of their contracts. Millions of acres were returned to the federal government. He signed the Interstate Commerce Act in 1887, which was intended to stop railroads’ discriminatory practices favoring big business.

With a surplus in the US Treasury, he called for lower taxes. Since there was no income tax at that time, this meant reductions in protective tariffs (import taxes).

As he told a friend, Cleveland understood his chief legislative duty to be stopping bad laws, rather than trying to convince Congress to pass good ones. Cleveland used the veto more than any other US President before or since. In his first term alone, the Democratic President vetoed more than 400 bills passed by the Republican Congress.

Civil War Pensions

After the Civil War, claims for pensions poured in from people claiming to be veterans or widows of veterans. While many were genuine, many more were falsified. More than half of the bills Cleveland vetoed in his first term were fraudulent claims for Civil War pensions.

As Cleveland’s vetoes continued, the Grand Army of the Republic (a group of Union Army veterans) lobbied Congress for broader private pensions. The group convinced Congress to pass a bill granting pensions to veterans for disabilities that were not caused by military service. Despite strong public support for the bill, Cleveland vetoed it. He said, “Public money appropriated for pensions ... should be devoted to the [assistance] of those who in the defense of the Union and the nation's service have worthily suffered, and who in the day of their dependence resulting from such suffering are entitled the benefactions of their government.”

The Texas Seed Bill

Cleveland opposed the use of public money to relieve individual suffering unrelated to public service even when the suffering was genuine. One of Cleveland’s most famous vetoes was his veto of the Texas Seed Bill in 1887. A long and severe drought had stricken areas of Texas. With no grass to graze, eighty-five percent of cattle in the western part of the state died. Those cattle that remained were starving, often motherless calves. Many farmers were also close to starvation and had eaten their seed corn to survive. Congress authorized a special appropriation to send seeds to the drought-stricken farmers. The amount

Grover Cleveland and the Texas Seed Bill Veto

Presidents & the Constitution, Volume II ©The Bill of Rights Institute
($10,000, or approximately $223,000 in today’s dollars) was small and the need was great, but Cleveland vetoed the bill. His veto message expressed his commitment to the Constitution and the importance of private charity. He said that while he thought the intentions of the bill were good, he had to withhold his approval. He wrote:

“I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit. A prevalent tendency to disregard the limited mission of this power and duty should, I think, be steadfastly resisted, to the end that the lesson should be constantly enforced that, though the people support the government, the government should not support the people.”

Furthermore, Cleveland said, it would weaken the “bonds of a common brotherhood” for the government to provide assistance to individuals where individuals, families, communities and private charities otherwise would.

Finally, the veto message suggested that if Congress wanted to relieve the suffering of Texas farmers, Senators and Representatives from each state could voluntarily give up the share of grain distributed by the Department of Agriculture each year. “The constituents, for whom in theory this grain is intended, could well bear the temporary deprivation, and the donors would experience the satisfaction attending deeds of charity.”

Cleveland’s fight against protective tariffs was unpopular among the groups the tariffs protected, and Cleveland lost the Presidency to William Henry Harrison in 1888. (Cleveland won a plurality of the popular vote, but lost the electoral vote and therefore the Presidency.) As the Clevelands were leaving Washington DC, the First Lady is said to have told the White House staff to keep an eye on the furniture because they’d be back—and she was right. Cleveland was elected to the Presidency again in 1892, the only President ever to serve two non-consecutive terms.

In his second term, Cleveland worked to maintain the gold standard, which he thought was the only guarantee of a stable currency. He sent federal troops to suppress the violent Pullman strike, where rail workers refused to switch Pullman cars and crippled mail service west of Chicago. Congress went on to pass lower tariffs, though they were not as low as Cleveland had hoped. The New York Sun wrote after President Cleveland had left office, “As President, Mr. Cleveland enforced the laws and did not truckle to organized violence or crouch before public clamor. [He] is sure of an honorable place in history and of the final approval of his countrymen.”

**Critical Thinking Questions**

1. List three ways that President Cleveland worked to make the federal government less partisan and more efficient.
2. Why did Cleveland veto so many Civil War pension claims?
3. Why did Cleveland veto the Texas Seed Bill?
4. Why did the President adhere to the Constitution during a crisis?
5. How would you assess Cleveland’s understanding that his primary role was to stop bad laws rather than promote good ones?
Cleveland’s Veto Message

**Directions:** Read the following document and complete **Handout C: Document Guide** as you read.

**UNITED STATES, February 16, 1887**

**To the House of Representatives of the United States:**

I return without my approval House bill number ten thousand two hundred and three, entitled “An Act to enable the Commissioner of Agriculture to make a special distribution of seeds in drought-stricken counties of Texas, and making an appropriation therefor.” [1]

[A] long-continued and extensive drought has existed in certain portions of the State of Texas, resulting in a failure of crops and consequent distress and destitution. [2]

Though there has been some difference in statements concerning the extent of the people’s needs in the localities thus affected, there seems to be no doubt that there has existed a condition calling for relief; and I am willing to believe that, notwithstanding the aid already furnished, a donation of seed-grain to the farmers located in this region, to enable them to put in new crops, would serve to avert a continuance or return of an unfortunate blight. [3]

And yet I feel obliged to withhold my approval of the plan as proposed by this bill, to indulge a benevolent and charitable sentiment through the appropriation of public funds for that purpose. [4]

I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the general government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit. A prevalent tendency to disregard the limited mission of this power and duty should, I think, be steadfastly resisted, to the end that the lesson should be constantly enforced that, though the people support the government, the government should not support the people. [5]

The friendliness and charity of our countrymen can always be relied upon to relieve their fellow-citizens in misfortune. This has been repeatedly and quite lately demonstrated. Federal aid in such cases encourages the expectation of paternal care on the part of the government and weakens the sturdiness of our national character, while it prevents the indulgence among our people of that kindly sentiment and conduct which strengthens the bonds of a common brotherhood. [6]

It is within my personal knowledge that individual aid has, to some extent, already been extended to the sufferers mentioned in this bill. The failure of the proposed appropriation of ten thousand dollars additional, to meet their remaining wants, will not necessarily result in continued distress if the emergency is fully made known to the people of the country. [7]

—Grover Cleveland
Directions: Using context clues or a dictionary, write a short definition for each of the following words. Then answer the questions that follow.

VOCABULARY
1. appropriation: _____________________________________________________________
2. extensive: _________________________________________________________________
3. destitution: ________________________________________________________________
4. avert: _____________________________________________________________________
5. obliged: ___________________________________________________________________
6. benevolent: ________________________________________________________________
7. warrant: __________________________________________________________________
8. prevalent: _________________________________________________________________
9. steadfastly: __________________________________________________________________
10. paternal: __________________________________________________________________
11. indulgence: __________________________________________________________________

CONTEXT QUESTIONS
1. Who wrote this document? ____________________________________________________
2. When was this document written? ______________________________________________
3. What was the purpose of this document? _________________________________________

COMPREHENSION QUESTIONS
1. What does President Cleveland state that the distribution of seeds would do in paragraph 3? ___________________________________________________________________________
2. How does he describe the intentions of the Texas Seed bill in paragraph 4? ______________
   ___________________________________________________________________________
3. What reason does he give for his veto in paragraph 5? ______________________________
   ___________________________________________________________________________
4. What reason does he give for his veto in paragraph 6? ______________________________
   ___________________________________________________________________________
5. What does he says he expects from “the people of the country” in paragraph 7? __________________________________________________________________
**Critical Thinking Questions**

1. Why would the President adhere to the Constitution in a crisis? __________________________________________________________

2. When, if ever, should the President set aside limits on the Constitution to relieve human suffering? __________________________________________________________

3. Do you think a bill like the Texas Seed Bill would likely be vetoed today? Why or why not? __________________________________________________________

4. When individuals give money to charity, who decides which charities will receive money? When individuals give money to the government to use for direct assistance, who decides which charities will receive money? __________________________________________________________

5. When government spends the public’s money for direct assistance, how does that change the way individuals experience helping others? Does it harm the “bonds of a common brotherhood” that Cleveland spoke of? __________________________________________________________

6. How would you know if any of Cleveland’s warnings about the “expectation of paternal care on the part of government” government have come true? __________________________________________________________
Overview

Perhaps no two Presidents in American history had such radically different views about the constitutional powers of the federal government than Herbert Hoover and Franklin Delano Roosevelt. Hoover believed in a limited federal power whose chief purpose was to foster individual liberty and responsibility, while Roosevelt believed that the federal government had broad powers to promote the general welfare. Each President drew upon his views of federal power in his approaches to solving the problems posed by the Great Depression. In this lesson, students will examine the public speeches of each man to better understand their views of the primary purposes and powers of the federal government, a debate which continues today.

Objectives

Students will:

- Understand the different approaches taken by Herbert Hoover and Franklin D. Roosevelt to solving the problems of the Great Depression.
- Analyze how the public speeches of Hoover and Roosevelt reflected their different views of the primary purposes and powers of the federal government.
- Evaluate to what extent the beliefs and actions of Hoover and Roosevelt were consistent with key constitutional principles.

Critical Engagement Question

How did Herbert Hoover and Franklin D. Roosevelt differ in their understanding of the federal government’s power “to promote the general welfare and secure the blessings of liberty”?

Materials

- Handout A: Herbert Hoover, Franklin D. Roosevelt, and the Great Depression
- Handout B: Excerpts from Hoover and Roosevelt Speeches
- Handout C: The Purposes of the Federal Government

Background/Homework

A. Ask students to brainstorm what images, ideas, or people come to mind when they hear the term “rugged individual” and the term “forgotten man”? Have students write down some words and phrases and/or draw a picture representing each term.

B. Have students read Handout A: Herbert Hoover, Franklin D. Roosevelt, and the Great Depression. As they read, they should be asking themselves which image of Americans—as rugged individuals or as forgotten men—was held by Hoover? By Roosevelt?
WARM-UP  [ 10 minutes ]

A. Review the previous discussion about the “rugged individual” and the “forgotten man.” Ask students: According to Hoover, what role should the government play in the life of the “rugged individual”? Students may suggest: let him alone; support his efforts to benefit society; individuals are what make America great and the government should not interfere; provide equality of opportunity for individuals; promote his liberty; etc.

B. According to Roosevelt, what role should the federal government play in the life of the “forgotten man?” Students may suggest: find him; care for him; require society to pool its collective resources to help him; provide for his welfare; etc.

ACTIVITY  [ 30 minutes ]

A. Distribute one to two quote slips from Handout B: Excerpts from Hoover and Roosevelt Speeches to each student, as well as Handout C: The Purposes of the Federal Government.

B. Point out to students that the phrases “promote the general welfare” and “secure the blessing of liberty” are taken from the Preamble to the Constitution and are considered to be two of the major purposes of the federal government.

C. For each quote, they should answer the following questions:
   1. Who do you think made this statement, Hoover or Roosevelt? How do you know?
   2. Does this quote support the purpose of government as stated in Column A, Column B, or both? Students should write the number of the quote in the appropriate column on the Handout, along with a brief paraphrase.

D. Students should circulate around the classroom, reading their quotes to each other and writing the number of the quote in the appropriate column. As students are circulating, post a large copy of Handout C at the front of the room.

E. Once students have at least five quote numbers on their charts, reconvene as a large group, asking each student to read his/her original quote. Students should then tape the quote in the appropriate column on the large T-chart. (Quotes likely supporting liberty:  1, 4, 6, 8, 9, 12, 14, 15, 22, 23, 27, 28, 30, 31, 32, 34, 35, 37, 42; quotes likely supporting well-being:  2, 3, 5, 7, 10, 11, 13, 16, 18, 20, 21, 24, 25, 26, 29, 33, 36, 38, 41; quotes likely supporting both/ either:  17, 19, 39, 40.) Encourage discussion, especially if there is disagreement.

F. Students should work with a partner to categorize the quotes in each column into five to seven key themes. Summary themes for Column A (liberty) might include: protect individual rights, limit government, encourage self-reliance, support private enterprise, provide equality of opportunity, ensure ordered liberty, secure the conditions for the pursuit of happiness, etc. Summary themes for Column B (well-being) might include: foster group security, promote social justice, increase government regulation, find the “forgotten man”, achieve the common good, ensure economic security, secure happiness, etc.
Wrap-Up [10 minutes]

Ask students to consider the following questions, accepting all reasoned responses:

- If the main purpose of the federal government is to secure and preserve liberty, how can the President and the citizens ensure that people's welfare (well-being) is protected?
- If the main purpose of the federal government is to promote the general welfare (well-being), how can the President and the citizens ensure that individual liberty is preserved?
- If both of these purposes are equally important, how do we strike a balance between them when the nation is faced with economic, social, or political challenges?

Homework

A. Have students make a digital or paper collage of images and phrases which reflect Hoover’s ideal of the “rugged individual” or Roosevelt’s image of the “forgotten man.”

B. Write a two to three page mini-play in which Hoover and Roosevelt debate how to solve the problems of the Depression. The dialogue should reflect Hoover’s commitment to government’s role in securing liberty and Roosevelt’s commitment to government’s role in promoting the general welfare.

C. Answer one (or all) of the questions posed in the Wrap-Up in a well-constructed three to five paragraph essay per question.

Extensions

Imagine that it is December, 1932—the period between Hoover’s defeat and Roosevelt’s inauguration. Have students assume the persona of either Hoover or Roosevelt, and write a letter to the other with advice about/plans for dealing with the problems of the Depression. (Note: Such a correspondence actually took place. See pgs. 154-160 of Gordon Lloyd’s The Two Faces of Liberalism: How the Hoover-Roosevelt Debate Shapes the 21st Century (M & M Scrivener Press, 2007.)

The Issues Endure

Students should research/review a significant contemporary social or political issue, e.g. health care, education, the War on Terror. Students should write a multi-paragraph essay analyzing how Hoover might deal with the issue; how Roosevelt might deal with the issue; and then assess whose approach is more consistent with constitutional principles.
In 1928, Herbert Hoover believed the nation would continue to prosper. As a candidate for President, he opposed regulating business, but supported business through tariff policies, a balanced budget, and the promotion of scientific research and foreign trade. He believed that a good education and a government protecting individual liberties makes it possible for everyone to succeed. Influenced by his humanitarian work after WWI, Hoover trusted voluntary organizations to meet the needs of the poor and help them become self-supporting. Economic, political, and social justice depended on limiting the actions of the central government. Individuals and organizations were the forces for social and economic change. These ideals were reflected in his Inaugural Address.

However, eight months after Hoover’s inauguration, the economy collapsed. The stock market crash of October 1929 signaled serious underlying problems in the economy. Business failures, home foreclosures, bank closures, and spiraling unemployment rippled across the nation. At first Hoover believed that this downturn was similar to the periodic recessions that were typical of the American business cycle.

About a year later, Hoover acknowledged the Depression. He again spelled out his commitment to voluntary, community-based solutions. However, he also pointed out that the federal government was working to promote people’s well-being through large-scale public works projects.

Hoover took the following actions in response to the depression:

- Encouraged businessmen not to cut production or lay off workers
- Asked Congress to increase spending on public works projects and to increase funding for banks to prevent mortgage foreclosures
- Created the Reconstruction Finance Corporation
- Encouraged farmers to voluntarily cooperate to raise prices
- Promoted voluntarism as a way to ease the crisis
- Avoided spending large amounts of federal money so as not to increase the public debt

But these efforts by the federal government did not stem the economic disaster. By 1932, the unemployment rate was twenty-five percent. Homeless people lived in shanty-towns called “Hoovervilles” in many cities, and the Gross National Product had fallen from a high of over $100 billion in 1929 to $55 billion.

Challenging Hoover in the Presidential campaign of 1932 was the Democratic nominee, Franklin Delano Roosevelt. He projected a positive, energetic, and imaginative image, promising the American people a “new deal.” FDR stated that the economic condition of the country was a bigger emergency than the nation had faced upon entering World War I. He charged the Hoover administration with having ignored “the forgotten man at the bottom of the economic pyramid.”

He believed that that the nation’s economic woes were the result of too much influence by a small group of wealthy men motivated by selfish goals. Their exercise of property rights had interfered with the liberty of individuals, and government
had to intervene in order to protect the less fortunate. He supported government planning for social and economic problems.

Roosevelt easily won the election in November of 1932 with almost sixty percent of the popular vote. In his First Inaugural Address, he encouraged the American people to find hope in their history of overcoming obstacles. He stated that “the only thing we have to fear is fear itself....” Roosevelt praised the Constitution’s balance between executive and legislative authority. But he stated that he was prepared to ask Congress for more power to deal with the emergency, just as would be the case in the event of a military attack. His plan was one of government action to bring about immediate relief, short-term recovery, and long-term reform.

In the first hundred days of the new administration, Congress quickly approved a wide variety of programs called the First New Deal. The Federal Deposit Insurance Corporation, National Industrial Recovery Act, Civilian Conservation Corps, Public Works Administration, and Tennessee Valley Authority were among the major pieces of legislation. All significantly increased the role and the size of the federal government.

After the 1934 election, Roosevelt worked to extend New Deal reforms through measures designed to provide more benefits to the “forgotten man.” Extensive public works projects, the Social Security Act, increased income taxes on the wealthy, and several programs intended to help farmers, laborers, and the unemployed made up the Second New Deal.

Though the economy was far from healthy after four years of the New Deal, (the unemployment rate in 1936 was still seventeen percent), Roosevelt won over sixty percent of the popular vote in the 1936 Presidential Election.

In his Second Inaugural Address, Roosevelt explained that the Constitution was sufficient to solve the problems of increasingly complex civilization. In expanding the reach of the federal government to solve economic problems, he asserted that Americans were “writing a new chapter in our book of self-government.” But Americans were not, he said, changing the essential foundations established in 1789.

Throughout the 1930s, Herbert Hoover continued to speak out about his opposition to the New Deal. He championed his belief in an America whose foundations were individual liberties, limited governments, and self-reliant, responsible citizens. Roosevelt continued to support legislation and executive actions which promoted the general welfare, increased the role of government in the lives of individuals, and sought to achieve social justice through federal action.

The debate over the federal government’s commitment to “promote the general welfare and secure this blessings of liberty to ourselves and our posterity” (as well as to whether the actions of either President shortened or prolonged the Depression) continues today.

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**Critical Thinking Questions**

1. According to each President, who could best bring about social and economic change?
2. What actions did each President take to respond to the Great Depression?
3. Roosevelt asserted that the expanded reach of the federal government to solve economic problems was not an essential change to the Constitution. Do you agree? Why or why not?
4. In what ways did each President believe that the federal government should “promote the general welfare and secure the blessings of liberty to ourselves and our posterity”? 

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**Excerpts from Hoover and Roosevelt Speeches**

**Directions:** Distribute one or two speech excerpts to each student and follow the directions for the Activity.

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<tr>
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<th>Excerpt</th>
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<tbody>
<tr>
<td>1</td>
<td>It is the duty of government to avoid regulation as long as equal opportunity to all citizens is not invaded and public rights violated.</td>
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<tr>
<td>2</td>
<td>These unhappy times call for the building of plans ... that put their faith once more in the forgotten man at the bottom of the economic pyramid.</td>
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<tr>
<td>3</td>
<td>As I see it, the task of government in relation to business is to assist the development of an economic declaration of rights, an economic constitutional order.</td>
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<tr>
<td>4</td>
<td>Government should not engage in business in competition with its citizens.</td>
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<tr>
<td>5</td>
<td>The responsible heads of finance and industry, instead of acting each from himself, must work together to achieve the common good.</td>
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<tr>
<td>6</td>
<td>It is the duty of business to conduct itself so that government regulation or government competition is unnecessary.</td>
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<td>7</td>
<td>The public must be protected from any domination or from predatory business.</td>
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<td>8</td>
<td>Equality of opportunity is the right of every American. This ideal of individualism based upon equal opportunity of every citizen is the negation of socialism. Equality of opportunity is a fundamental principle of our nation.</td>
<td></td>
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<tr>
<td>9</td>
<td>The government should assume the function of economic regulation only as a last resort.</td>
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<tr>
<td>10</td>
<td>Government in this regard is the maintenance of a balance, within which every individual may have a place if he will take it; in which every individual may find safety if he wishes it; in which every individual may attain such power as his ability permits, consistent with his assuming the accompanying responsibility.</td>
<td></td>
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<tr>
<td>11</td>
<td>If we are to go forward, we must move as a trained and loyal army willing to sacrifice for the good of a common discipline.</td>
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<tr>
<td>12</td>
<td>Every step of bureaucratizing of the business of our country poisons ... political equality, free speech, free assembly, free press, and equality of opportunity.</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>We are, I know, ready and willing to submit our lives and our property to [military-like discipline], because it makes possible a leadership which aims at the larger good.</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Economic freedom cannot be sacrificed if political freedom is to be preserved.</td>
<td></td>
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</tbody>
</table>
The very essence of equality of opportunity and of American individualism is that there shall be no domination by any groups or combination in this republic, whether it be business or political.

Our Constitution is so simple, so practical that it is possible always to meet extraordinary needs by changes in emphasis and arrangement without loss of essential form.

Confidence and courage are the essentials of success in carrying out our plan.

The true conservative seeks to protect the system of private property and free enterprise by correcting such injustices and inequalities as arise from it.

We are nearer today to the ideal of the abolition of poverty and fear from the lives of men and women than ever before in any land.

By using the new materials of social justice we have undertaken to erect on the old foundations a more enduring structure for the better use of future generations.

I see one-third of a nation ill-housed, ill-clad; ill-nourished.

The preservation of self-government; the perfection of justice whether in economic or in social fields; the maintenance of order liberty; the denial or domination by any group or class; the building up and preservation of equality of opportunity; the stimulation of initiative and individuality ... [are American ideals.]
<table>
<thead>
<tr>
<th>Page</th>
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<tbody>
<tr>
<td>23</td>
<td>Economic depression cannot be cured by legislative action or executive pronouncement.</td>
</tr>
<tr>
<td>24</td>
<td>The federal government is engaged upon the greatest program of waterway, harbor, flood control, public building, highway, and airway improvement in all our history.</td>
</tr>
<tr>
<td>25</td>
<td>In our personal ambitions we are individualists. But in our seeking for economic and political progress as a nation, we all go up; or else we all go down, as one people.</td>
</tr>
<tr>
<td>26</td>
<td>Some new plan is needed to our economic life ... to organize concerted plans for the better use of our resources.</td>
</tr>
<tr>
<td>27</td>
<td>It is not an issue as to whether people shall go hungry or cold in the United States. It is solely a question of the best method by which this hunger and cold shall be prevented.</td>
</tr>
<tr>
<td>28</td>
<td>The opening of the doors of the federal treasury is likely to stifle private giving and thus destroy far more resources than the proposed charity from the government.</td>
</tr>
<tr>
<td>29</td>
<td>Our greatest primary task is to put people to work.</td>
</tr>
<tr>
<td>30</td>
<td>The [New Deal methods and objectives] are an attempt to fasten upon the American people some sort of a system of personal government, of a government of laws; a system of centralization under a political bureaucracy; a system of debt; a system of inflation; a system which would stifle the freedom and liberty of men.</td>
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<td>31</td>
<td>These gigantic plans of a dictated economy ... were undertaken in disregard of the Constitution.</td>
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<td>32</td>
<td>This is a conflict between a philosophy of orderly individual liberty and a philosophy of government dictation.</td>
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<td>33</td>
<td>Americans must forswear that conception of the acquisition of wealth which, through excessive profits, creates undue private power over private affairs and, to our misfortune, over public affairs as well.</td>
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<td>34</td>
<td>It is the spirit of liberty which made ... the Constitution.</td>
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<td>35</td>
<td>There must never be confusion in the Bill of Rights, the balance of powers, local government, and a government of laws, not men.</td>
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<td>36</td>
<td>I stated that our first job was to restore men to work.</td>
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<td>37</td>
<td>Either we shall have a society based upon ordered liberty and the initiative of the individual, or we shall have a planned society that means dictation, no matter what you call it or who does it.</td>
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<td>38</td>
<td>All emergency works shall be united in a single, new, and greatly enlarged plan.</td>
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<td>39</td>
<td>This generation of Americans has a rendezvous with destiny.</td>
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<td>40</td>
<td>Freedom both requires and makes increased responsibilities.</td>
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Labor Day symbolizes our determination to achieve an economic freedom for the average man which will give his political freedom reality.

It is the Supreme Court defending the people’s rights and securities guaranteed by the Constitution which time and again has protected the people from those who seek for economic power or political power, or to suppress free worship and free thoughts.

**Hoover excerpts taken from the following:**

- Presidential Nomination Acceptance Address (August 11, 1928)
- Campaign Speech (October 22, 1928)
- Inaugural Address (March 4, 1929)
- Second Annual Message to Congress (December 2, 1930)
- Statement to the Press (February 3, 1931)
- Lincoln Birthday Dinner Address (February 12, 1936)
- *Crisis to Free Men* Speech (June 10, 1936)
- *Hands Off the Supreme Court* Speech (February 20, 1937)

*Hoover excerpts are numbers 1, 4, 6, 7, 8, 12, 14, 15, 19, 22, 23, 24, 27, 28, 30, 31, 32, 34, 35, 36, 37, 40, 42*

**Roosevelt excerpts taken from the following:**

- Address to Conference of Governors (June 2, 1931)
- *The Forgotten Man* Radio Address (April 7, 1932)
- Commonwealth Club Address (September 23, 1932)
- First Inaugural Address (March 4, 1933)
- First Fireside Chat (March 12, 1933)
- Annual Message to Congress (January 4, 1935)
- *The Dignity of Labor* Speech (September 6, 1936)
- Second Inaugural Address (January 20, 1937)

*Roosevelt excerpts are numbers 2, 3, 5, 9, 10, 11, 13, 16, 17, 18, 20, 21, 25, 26, 29, 33, 38, 39, 41*
**THE PURPOSES OF THE FEDERAL GOVERNMENT**

**Directions:** You will be given 1-2 quotes from statements by either Hoover or Roosevelt. For each quote, ask yourself, “Does this quote support the statement in Column A? Column B? both?” Write the number of the quote in the appropriate column, along with a brief paraphrase. (If the quote supports both statements, write the number/paraphrase in the middle.)

<table>
<thead>
<tr>
<th>THE MAIN PURPOSE OF THE FEDERAL GOVERNMENT IS TO SECURE AND PRESERVE LIBERTY.</th>
<th>BOTH</th>
<th>THE MAIN PURPOSE OF THE FEDERAL GOVERNMENT IS TO PROMOTE AND PRESERVE WELL-BEING.</th>
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Overview

President Thomas Jefferson, elected at the end of the Quasi-War with France, faced domestic unease when Spain returned Louisiana to France at Napoleon’s insistence. Aware of the strategic importance of New Orleans and wary of Napoleon’s desire to build an empire in North America, Jefferson sent negotiators to France to purchase land east of the Mississippi. As time went on, though, France had other priorities and in the spring of 1803 offered the United States the whole Louisiana territory—more than 800,000 acres—for $15 million. Jefferson had always feared the costs of loose construction of the powers delegated to the national government in the Constitution, and the Constitution did not provide for the incorporation of new lands into the US. Jefferson urged bringing the issue to the people to approve with a constitutional amendment, but a special session of Congress disregarded his draft amendment. The Senate ratified the Louisiana Purchase Treaty in October of 1803. While Jefferson did his best to follow what he believed was proper constitutional procedure, not enough of his contemporaries agreed with him and he eventually assented.

Objectives

Students will:
- Understand the events leading up to the Louisiana Purchase.
- Analyze Thomas Jefferson’s views of the Purchase’s constitutionality.
- Assess the constitutionality of the Louisiana Purchase.
- Appreciate Jefferson’s dilemma between expedience and constitutional scruples.

Critical Engagement Question

Why did President Thomas Jefferson, an advocate of strict construction of federal power, approve of the Louisiana Purchase?

Materials

- Handout A: Thomas Jefferson and the Louisiana Purchase
- Handout B: Jefferson’s Views on the Louisiana Purchase

Background/Homework

Have students read Handout A: Thomas Jefferson and the Louisiana Purchase and answer the questions.

Warm-Up [15 minutes]

A. Divide the class into six groups and give each group a quotation card from Handout B: Jefferson’s Views on the Louisiana Purchase.

B. Have students read and discuss the main ideas of their quotation. They should then write the quotation in their own words on the card.
**Activity [25 minutes]**

A. On the board, draw a long horizontal line to form the basis of a continuum. On one side of the line write “The Louisiana Purchase DOES require a constitutional amendment.” On the other side, write “The Louisiana Purchase DOES NOT require a constitutional amendment.”

B. Ask a spokesperson from the group with the first quotation to read it aloud, and then put it in their own words. Go over the meaning of Jefferson’s statement.

C. Ask a different volunteer from that group to take their quotation card and place it on the continuum to demonstrate where Jefferson’s view would fall.

D. Continue with all the groups until all cards have been placed.

E. Debrief the class on what they observe about the changes on Jefferson’s views. Then, using the Answer Key, rearrange the quotations to reflect chronology and debrief again.

**Wrap-up [10 minutes]**

As a large group, discuss the evolution of Thomas Jefferson’s views on the necessity of a constitutional amendment to authorize the Louisiana Purchase.

... Did his views actually change?

... Given the force of Jefferson’s earlier statements about the importance of holding the national government to the exercise of its enumerated powers only, would it be fair to call him a “flip-flopper”? Why or why not?

**Homework**

Have one half of the class draw a political cartoon that might have been published by a Federalist newspaper on Jefferson’s acceptance of the Louisiana Purchase without a constitutional amendment. The other half should draw a cartoon that might have been published by a Republican paper. All cartoons should feature the Constitution as a graphic element. Have students post their cartoons around the room and give students time to view them all.

**Extensions**

While many historians credit Jefferson’s vision and diplomatic skills in securing the Louisiana Purchase, others give more credit to mosquitoes—arguing that Napoleon simply had to change his priorities after losing too many soldiers in the Caribbean to malaria. Have students conduct additional research about the Louisiana Purchase and Jefferson’s involvement and write a position paper in which they convince their reader that Jefferson does or does not deserve the credit for the Louisiana Purchase. Students can begin their research at:

http://www.monticello.org/jefferson/lewisandclark/louisiana.html
http://www.archives.gov/exhibits/american_originals_iv/sections/louisiana_purchase_treaty.html
http://avalon.law.yale.edu/subject_menus/fr1803m.asp
Thomas Jefferson accomplished many of his proudest achievements before becoming President. In 1776, he authored the Declaration of Independence. Three years later he wrote the Virginia Statute for Religious Liberty which laid groundwork for the First Amendment’s protection of religious freedom. By the end of the century, Jefferson was emerging as the leader of one of the two first political parties in the US.

The Republicans, led by Jefferson, argued for strict construction of the powers given to the national government in the Constitution. This meant they believed its powers should be interpreted in narrow, limited terms. They believed power should be de-centralized, with most powers remaining with state and local governments. Federalists like Washington and John Adams advocated a stronger central government. Jefferson was elected President in 1801, in an election where many Federalists were turned out of national offices.

The US and Napoleon

France had given up all of its territory in North America at the end of the French and Indian War (1763). But Napoleon had plans to re-establish the French empire in North America. In 1801, America learned that Spain had agreed to return Louisiana to France. Many in the US were uneasy. President Jefferson shared that unease. He instructed US Minister to France Robert Livingston to try to buy New Orleans, but Napoleon refused.

Jefferson had always looked upon France as a friend in the world, but he knew this was a potential crisis. Almost half the goods exported from the US were shipped through New Orleans. Jefferson wrote in April of 1802, “There is on the globe one single spot, the possessor of which is our natural and habitual enemy. It is New Orleans.” The new nation depended on the port city for its economic survival.

In early 1803, Jefferson appointed James Monroe as a special envoy to France. Monroe and Livingston would try again to buy land east of the Mississippi or in New Orleans itself, or, if all else failed, to secure US access to the river. Jefferson authorized them to negotiate up to $10 million. He emphasized how important their mission was: “Every eye in the US is now fixed on this affair with Louisiana. Perhaps nothing since the Revolutionary War has produced more uneasy sensations through the body of the nation.”

Monroe arrived in France in April of 1803 and quickly learned that France had shifted its priorities. Napoleon had given up his desire to recreate an empire in North America. France offered the US the entire Louisiana territory—more than 800,000 acres from Louisiana to the Rockies and beyond—for $15 million. The two American ministers seized the opportunity, going beyond their mandate. They negotiated a purchase treaty and returned to the US in time for an announcement to be made on July 4, 1803.

Jefferson and the Constitution

The Louisiana Purchase Treaty would not be final until it was ratified by the Senate, funded by the House of Representatives, and signed by the President. While the incorporation of these new lands into the United States was
a momentous opportunity, Jefferson had reservations about its constitutionality.

Jefferson had always stated his strong belief that the federal government’s powers should be interpreted strictly. In 1791, nearly a decade earlier, he had argued, “To take a single step beyond the boundaries thus specifically drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition.” In 1798, Jefferson had argued that, “Whenever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force.”

The Constitution was at the center of Jefferson’s analysis of the Louisiana Purchase. Jefferson knew that Articles I and II gave the Executive and Legislative Branches roles in treaty-making. Since the states were forbidden by the Constitution from entering into treaties, and the people had no way of doing so, Jefferson reasoned that only the federal government could make treaties to acquire new land.

But the processes for holding and incorporating those foreign lands were another matter. Article IV of the Constitution said new states could be added, but made no provision for taking on foreign territories. Jefferson argued that a constitutional amendment was needed. He wrote in 1803, “The Constitution ... has not given [the General Government] power of holding foreign territory, and still less of incorporating it into the Union. An amendment of the Constitution seems necessary for this.”

**Constitutional Amendment?**

Jefferson drafted an amendment that would authorize the purchase of Louisiana retroactively. His draft read in part, “Louisiana as ceded by France to the United States is made a part of the United States. Its white inhabitants shall be citizens and stand, as to their rights and-obligations, on the same footing with the citizens of the United States ...”

A special session of Congress disregarded his draft, however, and the Senate ratified the treaty in October of 1803.

Jefferson may have had to compromise his most sacredly-held principles for the Louisiana Purchase to go forward. But he later described the Purchase as a “great achievement.” He wrote in 1810, “It is incumbent on those who accept great charges to risk themselves on great occasions.” President Thomas Jefferson doubled the size of the United States and set a precedent for the acquisition of new lands through means other than war and conquest.

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**Critical Thinking Questions**

1. How did Republicans believe the powers of the national government should be interpreted?
2. Why was New Orleans important to the American economy?
3. What did Jefferson instruct James Monroe and Robert Livingston to do on their diplomatic mission in 1803?
4. What were Jefferson’s concerns about the constitutionality of the Louisiana Purchase Treaty?
5. One historian has described the Louisiana Purchase as raising “in Jefferson’s mind a conflict between constitutional scruples and expediency.” What did he mean?
1

**Thomas Jefferson to John Dickinson**

The General Government has no powers but such as the Constitution gives it. ...It has not given it power of holding foreign territory, and still less of incorporating it into the Union. An amendment of the Constitution seems necessary for this. In the meantime we must ratify and pay our money, as we have treated, for a thing beyond the Constitution, and rely on the nation to sanction an act done for its great good, without its previous authority.

_In your own words:_

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

2

**Thomas Jefferson to Senator John C. Breckenridge**

This treaty must of course be laid before both Houses, because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying & paying for it... But I suppose they must then appeal to the nation for an additional article to the Constitution, approving and confirming an act which the nation had not previously authorized. ...The Legislature ... must ... throw themselves on their country for doing for them unauthorized what we know they would have done for themselves had they been in a situation to do it. It is the case of a guardian investing the money of his ward in purchasing an important adjacent territory; and saying to him when of age, “I did this for your good.”

_In your own words:_

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________
Thomas Jefferson to Wilson Cary Nicholas

I am aware of the force of the observations you make on the power given by the Constitution to Congress to admit new states into the Union, without restraining the subject to the territory then constituting the US. But when I consider that the limits of the US are precisely fixed ... [and] that the Constitution expressly declares itself to be made for the US, I cannot help believing the intention was to permit Congress to admit into the Union new states which should be formed out of the territory for which, and under whose authority alone, they were then acting. I do not believe it was meant that they might receive England, Ireland, Holland, etc. into it, which would be the case on your construction.

In your own words:
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

Thomas Jefferson to Wilson Cary Nicholas

When an instrument admits two constructions, the one safe, the other dangerous, the one precise, the other indefinite, I prefer that which is safe and precise. I had rather ask an enlargement of power from the nation, where it is found necessary, than to assume it by a construction which would make our powers boundless. Our peculiar security is in possession of a written Constitution. Let us not make it a blank paper by construction.

In your own words:
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
Thomas Jefferson to Wilson Cary Nicholas

I confess, then, I think it important in the present case to set an example against broad construction by appealing for new power to the people. If, however, our friends shall think differently, certainly I shall acquiesce with satisfaction, confiding that the good sense of our country will correct the evil of construction when it shall produce ill effects.

In your own words:

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

Thomas Jefferson’s Third Annual Message to Congress

The property and sovereignty of all Louisiana... have on certain conditions been transferred to the United States by instruments bearing date the 30th of April last. When these shall have received the constitutional sanction of the Senate, they will without delay be communicated to the Representatives also, for the exercise of their functions, as to those conditions which are within the powers vested by the Constitution in Congress. The property and sovereignty of the Mississippi and its waters secure an independent outlet for the produce of the western States..., the fertility of the country, ... promise in due season important aids to our treasury, an ample provision for our posterity, and a wide-spread field for the blessings of freedom and equal laws. With the wisdom of Congress it will rest to take those ... measures which may be necessary for the immediate occupation and temporary government of the [Louisiana Purchase territory]; for its incorporation into our union.

In your own words:

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
**Overview**

Cleveland understood his constitutional legislative responsibility as preventing harmful bills from becoming law, rather than promoting what he saw as beneficial ones. Using the veto, Cleveland stopped the federal government from taking on what he saw as a “paternal” role toward citizens, whether that role came in the form of excessive or fraudulent pension payouts, or in proposed relief for drought-stricken farmers in Texas. These principled stances brought him many enemies, but he did not waver from his commitment to exercising only the powers warranted by the Constitution. One American author said that Cleveland’s “patriotic virtues have won for [him] the homage of half a nation and the enmity of the other half. This places [his] character upon a summit as high as Washington’s.”

**Objectives**

Students will:
- Understand Grover Cleveland’s philosophy of limited government.
- Analyze Cleveland’s actions as President in light of the Constitution.
- Evaluate the prudence of Cleveland’s veto of the Texas Seed Bill.
- Assess whether Cleveland deserved the “homage” or the “enmity” of the nation.

**Critical Engagement Question**

Why would the President adhere to the Constitution during a crisis?

**Materials**

- Handout A: Grover Cleveland and the Texas Seed Bill Veto
- Handout B: Cleveland’s Veto Message
- Handout C: Document Guide

**Background/Homework**

Have students read Handout A: Grover Cleveland and the Texas Seed Bill Veto and answer the questions.

**Warm-Up [10 minutes]**

A. Ask students to brainstorm wide-scale crises and disasters in American history such as Hurricane Katrina, the 2001 terrorist attacks, floods, earthquakes, etc.

B. Next, brainstorm private and public ways that our society has responded to disasters, e.g. individuals offering assistance, private charities and organizations like the Red Cross, state or federal National Guard mobilization, etc.
**Activity [30 minutes]**

A. Ask students to recall the purpose of the Texas Seed Bill.
   - What did they think when they learned that Cleveland had vetoed it?
   - Was Cleveland choosing between adhering to the Constitution and relieving human suffering? Why or why not?

B. Divide the class into pairs and have students read **Handout B: Cleveland's Veto Message**. They should complete **Handout C: Document Guide** as they read.

C. After students have had time to read the document and answer the vocabulary, context, and comprehension questions on **Handout C**, read the document aloud one paragraph at a time. For each paragraph, ask students to summarize Cleveland's ideas in their own words.

D. As a large group, discuss the following questions:
   - What was Cleveland's constitutional objection to the Texas Seed Bill?
   - What was his other major objection to it?
   - Should Cleveland be admired for this veto? Why or why not?

**Wrap-Up [10 minutes]**

Have students discuss the critical thinking questions on **Handout C** in their pairs before reconvening the class for large group sharing.

- How much more involved in direct assistance has the government become since Grover Cleveland was President?
- What are the advantages and disadvantages of this?
- Are there some situations where government assistance not only discourages private assistance, but actually forbids it?

**Homework**

Have students write a newspaper obituary for President Cleveland in which they reference some of the major events of his Presidency and his responses to them.

**Extensions**

Have students read the Founders quotations on government and direct assistance found at [www.ArticleII.org/units/FedPower](http://www.ArticleII.org/units/FedPower). Keeping in mind that the Founders were individuals and were rarely of one mind on any specific subject, have them write a one or two sentence summary of the Founders' views on the role of government in providing direct assistance to citizens. They should then select one quotation and write a one-paragraph response.
As soon as he took office, President Cleveland demonstrated his commitment to an efficient government which granted special favors to no one. He refused to follow the “Spoils System” (awarding jobs to political supporters). He supported the Pendleton Bill, a federal law requiring certain government jobs to be based on merit and not just political party loyalty. Cleveland changed the description of more than eleven thousand jobs so that those positions would be subject to this law.

Cleveland worked to make the federal government more efficient as well as less partisan. He canceled orders from Navy contractors who were producing outdated vessels. He investigated railroad companies that had been given federal land, but that had not lived up to the terms of their contracts. Millions of acres were returned to the federal government. He signed the Interstate Commerce Act in 1887, which was intended to stop railroads’ discriminatory practices favoring big business.

With a surplus in the US Treasury, he called for lower taxes. Since there was no income tax at that time, this meant reductions in protective tariffs (import taxes).

As he told a friend, Cleveland understood his chief legislative duty to be stopping bad laws, rather than trying to convince Congress to pass good ones. Cleveland used the veto more than any other US President before or since. In his first term alone, the Democratic President vetoed more than 400 bills passed by the Republican Congress.

**Civil War Pensions**

After the Civil War, claims for pensions poured in from people claiming to be veterans or widows of veterans. While many were genuine, many more were falsified. More than half of the bills Cleveland vetoed in his first term were fraudulent claims for Civil War pensions.

As Cleveland’s vetoes continued, the Grand Army of the Republic (a group of Union Army veterans) lobbied Congress for broader private pensions. The group convinced Congress to pass a bill granting pensions to veterans for disabilities that were not caused by military service. Despite strong public support for the bill, Cleveland vetoed it. He said, “Public money appropriated for pensions … should be devoted to the [assistance] of those who in the defense of the Union and the nation’s service have worthily suffered, and who in the day of their dependence resulting from such suffering are entitled the benefactions of their government.”

**The Texas Seed Bill**

Cleveland opposed the use of public money to relieve individual suffering unrelated to public service even when the suffering was genuine. One of Cleveland’s most famous vetoes was his veto of the Texas Seed Bill in 1887. A long and severe drought had stricken areas of Texas. With no grass to graze, eighty-five percent of cattle in the western part of the state died. Those cattle that remained were starving, often motherless calves. Many farmers were also close to starvation and had eaten their seed corn to survive. Congress authorized a special appropriation to send seeds to the drought-stricken farmers. The amount...
($10,000, or approximately $223,000 in today’s dollars) was small and the need was great, but Cleveland vetoed the bill.

His veto message expressed his commitment to the Constitution and the importance of private charity. He said that while he thought the intentions of the bill were good, he had to withhold his approval. He wrote:

“I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the general government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit. A prevalent tendency to disregard the limited mission of this power and duty should, I think, be steadfastly resisted, to the end that the lesson should be constantly enforced that, though the people support the government, the government should not support the people.”

Furthermore, Cleveland said, it would weaken the “bonds of a common brotherhood” for the government to provide assistance to individuals where individuals, families, communities and private charities otherwise would.

Finally, the veto message suggested that if Congress wanted to relieve the suffering of Texas farmers, Senators and Representatives from each state could voluntarily give up the share of grain distributed by the Department of Agriculture each year. “The constituents, for whom in theory this grain is intended, could well bear the temporary deprivation, and the donors would experience the satisfaction attending deeds of charity.”

Cleveland’s fight against protective tariffs was unpopular among the groups the tariffs protected, and Cleveland lost the Presidency to William Henry Harrison in 1888. (Cleveland won a plurality of the popular vote, but lost the electoral vote and therefore the Presidency.) As the Clevelands were leaving Washington DC, the First Lady is said to have told the White House staff to keep an eye on the furniture because they’d be back—and she was right.

Cleveland was elected to the Presidency again in 1892, the only President ever to serve two non-consecutive terms.

In his second term, Cleveland worked to maintain the gold standard, which he thought was the only guarantee of a stable currency. He sent federal troops to suppress the violent Pullman strike, where rail workers refused to switch Pullman cars and crippled mail service west of Chicago. Congress went on to pass lower tariffs, though they were not as low as Cleveland had hoped. The New York Sun wrote after President Cleveland had left office, “As President, Mr. Cleveland enforced the laws and did not truckle to organized violence or crouch before public clamor. [He] is sure of an honorable place in history and of the final approval of his countrymen.”

### Critical Thinking Questions

1. List three ways that President Cleveland worked to make the federal government less partisan and more efficient.
2. Why did Cleveland veto so many Civil War pension claims?
3. Why did Cleveland veto the Texas Seed Bill?
4. Why did the President adhere to the Constitution during a crisis?
5. How would you assess Cleveland’s understanding that his primary role was to stop bad laws rather than promote good ones?
Cleveland’s Veto Message

Directions: Read the following document and complete Handout C: Document Guide as you read.

UNITED STATES, February 16, 1887
To the House of Representatives of the United States:

I return without my approval House bill number ten thousand two hundred and three, entitled “An Act to enable the Commissioner of Agriculture to make a special distribution of seeds in drought-stricken counties of Texas, and making an appropriation therefor.” [1]

[A] long-continued and extensive drought has existed in certain portions of the State of Texas, resulting in a failure of crops and consequent distress and destitution. [2]

Though there has been some difference in statements concerning the extent of the people’s needs in the localities thus affected, there seems to be no doubt that there has existed a condition calling for relief; and I am willing to believe that, notwithstanding the aid already furnished, a donation of seed-grain to the farmers located in this region, to enable them to put in new crops, would serve to avert a continuance or return of an unfortunate blight. [3]

And yet I feel obliged to withhold my approval of the plan as proposed by this bill, to indulge a benevolent and charitable sentiment through the appropriation of public funds for that purpose. [4]

I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the general government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit. A prevalent tendency to disregard the limited mission of this power and duty should, I think, be steadfastly resisted, to the end that the lesson should be constantly enforced that, though the people support the government, the government should not support the people. [5]

The friendliness and charity of our countrymen can always be relied upon to relieve their fellow-citizens in misfortune. This has been repeatedly and quite lately demonstrated. Federal aid in such cases encourages the expectation of paternal care on the part of the government and weakens the sturdiness of our national character, while it prevents the indulgence among our people of that kindly sentiment and conduct which strengthens the bonds of a common brotherhood. [6]

It is within my personal knowledge that individual aid has, to some extent, already been extended to the sufferers mentioned in this bill. The failure of the proposed appropriation of ten thousand dollars additional, to meet their remaining wants, will not necessarily result in continued distress if the emergency is fully made known to the people of the country. [7]

–Grover Cleveland
Directions: Using context clues or a dictionary, write a short definition for each of the following words. Then answer the questions that follow.

Vocabulary
1. appropriation: __________________________
2. extensive: ____________________________
3. destitution: __________________________
4. avert: _______________________________
5. obliged: ______________________________
6. benevolent: __________________________
7. warrant: ______________________________
8. prevalent: ____________________________
9. steadfastly: __________________________
10. paternal: ____________________________
11. indulgence: __________________________

Context Questions
1. Who wrote this document? __________________________
2. When was this document written? __________________________
3. What was the purpose of this document? __________________________

Comprehension Questions
1. What does President Cleveland state that the distribution of seeds would do in paragraph 3? __________________________
2. How does he describe the intentions of the Texas Seed bill in paragraph 4? __________________________
3. What reason does he give for his veto in paragraph 5? __________________________
4. What reason does he give for his veto in paragraph 6? __________________________
5. What does he says he expects from “the people of the country” in paragraph 7? __________________________
Critical Thinking Questions

1. Why would the President adhere to the Constitution in a crisis?

2. When, if ever, should the President set aside limits on the Constitution to relieve human suffering?

3. Do you think a bill like the Texas Seed Bill would likely be vetoed today? Why or why not?

4. When individuals give money to charity, who decides which charities will receive money? When individuals give money to the government to use for direct assistance, who decides which charities will receive money?

5. When government spends the public’s money for direct assistance, how does that change the way individuals experience helping others? Does it harm the “bonds of a common brotherhood” that Cleveland spoke of?

6. How would you know if any of Cleveland’s warnings about the “expectation of paternal care on the part of government” government have come true?
CONSTITUTIONAL CONNECTION

To create a context for this lesson, have students complete Constitutional Connection: The President and Federal Power.

OVERVIEW

Perhaps no two Presidents in American history had such radically different views about the constitutional powers of the federal government than Herbert Hoover and Franklin Delano Roosevelt. Hoover believed in a limited federal power whose chief purpose was to foster individual liberty and responsibility, while Roosevelt believed that the federal government had broad powers to promote the general welfare. Each President drew upon his views of federal power in his approaches to solving the problems posed by the Great Depression. In this lesson, students will examine the public speeches of each man to better understand their views of the primary purposes and powers of the federal government, a debate which continues today.

OBJECTIVES

Students will:

- Understand the different approaches taken by Herbert Hoover and Franklin D. Roosevelt to solving the problems of the Great Depression.
- Analyze how the public speeches of Hoover and Roosevelt reflected their different views of the primary purposes and powers of the federal government.
- Evaluate to what extent the beliefs and actions of Hoover and Roosevelt were consistent with key constitutional principles.

CRITICAL ENGAGEMENT QUESTION

How did Herbert Hoover and Franklin D. Roosevelt differ in their understanding of the federal government's power “to promote the general welfare and secure the blessings of liberty”?

MATERIALS

- Handout A: Herbert Hoover, Franklin D. Roosevelt, and the Great Depression
- Handout B: Excerpts from Hoover and Roosevelt Speeches
- Handout C: The Purposes of the Federal Government

BACKGROUND/HOMWORK

A. Ask students to brainstorm what images, ideas, or people come to mind when they hear the term “rugged individual” and the term “forgotten man”? Have students write down some words and phrases and/or draw a picture representing each term.

B. Have students read Handout A: Herbert Hoover, Franklin D. Roosevelt, and the Great Depression. As they read, they should be asking themselves which image of Americans—as rugged individuals or as forgotten men—was held by Hoover? By Roosevelt?
**WARM-UP [10 minutes]**

A. Review the previous discussion about the “rugged individual” and the “forgotten man.” Ask students: According to Hoover, what role should the government play in the life of the “rugged individual”? *Students may suggest: let him alone; support his efforts to benefit society; individuals are what make America great and the government should not interfere; provide equality of opportunity for individuals; promote his liberty; etc.*

B. According to Roosevelt, what role should the federal government play in the life of the “forgotten man”? *Students may suggest: find him; care for him; require society to pool its collective resources to help him; provide for his welfare; etc.*

**ACTIVITY [30 minutes]**

A. Distribute one to two quote slips from [Handout B: Excerpts from Hoover and Roosevelt Speeches](#) to each student, as well as [Handout C: The Purposes of the Federal Government](#).

B. Point out to students that the phrases “promote the general welfare” and “secure the blessing of liberty” are taken from the Preamble to the Constitution and are considered to be two of the major purposes of the federal government.

C. For each quote, they should answer the following questions:

   1. Who do you think made this statement, Hoover or Roosevelt? How do you know?
   2. Does this quote support the purpose of government as stated in Column A, Column B, or both? Students should write the number of the quote in the appropriate column on the Handout, along with a brief paraphrase.

D. Students should circulate around the classroom, reading their quotes to each other and writing the number of the quote in the appropriate column. As students are circulating, post a large copy of [Handout C](#) at the front of the room.

E. Once students have at least five quote numbers on their charts, reconvene as a large group, asking each student to read his/her original quote. Students should then tape the quote in the appropriate column on the large T-chart. *(Quotes likely supporting liberty: 1, 4, 6, 8, 9, 12, 14, 15, 22, 23, 27, 28, 30, 31, 32, 34, 35, 37, 42; quotes likely supporting well-being: 2, 3, 5, 7, 10, 11, 13, 16, 18, 20, 21, 24, 25, 26, 29, 33, 36, 38, 41; quotes likely supporting both/either: 17, 19, 39, 40.) Encourage discussion, especially if there is disagreement.

F. Students should work with a partner to categorize the quotes in each column into five to seven key themes. Summary themes for Column A (liberty) might include: *protect individual rights, limit government, encourage self-reliance, support private enterprise, provide equality of opportunity, ensure ordered liberty, secure the conditions for the pursuit of happiness, etc.* Summary themes for Column B (well-being) might include: *foster group security, promote social justice, increase government regulation, find the “forgotten man”, achieve the common good, ensure economic security, secure happiness, etc.*
**Wrap-Up [10 minutes]**

Ask students to consider the following questions, accepting all reasoned responses:

- If the main purpose of the federal government is to secure and preserve liberty, how can the President and the citizens ensure that people’s welfare (well-being) is protected?
- If the main purpose of the federal government is to promote the general welfare (well-being), how can the President and the citizens ensure that individual liberty is preserved?
- If both of these purposes are equally important, how do we strike a balance between them when the nation is faced with economic, social, or political challenges?

**Homework**

A. Have students make a digital or paper collage of images and phrases which reflect Hoover’s ideal of the “rugged individual” or Roosevelt’s image of the “forgotten man.”

B. Write a two to three page mini-play in which Hoover and Roosevelt debate how to solve the problems of the Depression. The dialogue should reflect Hoover’s commitment to government’s role in securing liberty and Roosevelt’s commitment to government’s role in promoting the general welfare.

C. Answer one (or all) of the questions posed in the Wrap-Up in a well-constructed three to five paragraph essay per question.

**Extensions**

Imagine that it is December, 1932—the period between Hoover’s defeat and Roosevelt’s inauguration. Have students assume the persona of either Hoover or Roosevelt, and write a letter to the other with advice about/plans for dealing with the problems of the Depression. (Note: Such a correspondence actually took place. See pgs. 154-160 of Gordon Lloyd’s *The Two Faces of Liberalism: How the Hoover-Roosevelt Debate Shapes the 21st Century* (M & M Scrivener Press, 2007.)

**The Issues Endure**

Students should research/review a significant contemporary social or political issue, e.g. health care, education, the War on Terror. Students should write a multi-paragraph essay analyzing how Hoover might deal with the issue; how Roosevelt might deal with the issue; and then assess whose approach is more consistent with constitutional principles.
In 1928, Herbert Hoover believed the nation would continue to prosper. As a candidate for President, he opposed regulating business, but supported business through tariff policies, a balanced budget, and the promotion of scientific research and foreign trade. He believed that a good education and a government protecting individual liberties makes it possible for everyone to succeed.

Influenced by his humanitarian work after WWI, Hoover trusted voluntary organizations to meet the needs of the poor and help them become self-supporting. Economic, political, and social justice depended on limiting the actions of the central government. Individuals and organizations were the forces for social and economic change. These ideals were reflected in his Inaugural Address.

However, eight months after Hoover’s inauguration, the economy collapsed. The stock market crash of October 1929 signaled serious underlying problems in the economy. Business failures, home foreclosures, bank closures, and spiraling unemployment rippled across the nation. At first Hoover believed that this downturn was similar to the periodic recessions that were typical of the American business cycle.

About a year later, Hoover acknowledged the Depression. He again spelled out his commitment to voluntary, community-based solutions. However, he also pointed out that the federal government was working to promote people’s well-being through large-scale public works projects.

Hoover took the following actions in response to the depression:

- Encouraged businessmen not to cut production or lay off workers
- Asked Congress to increase spending on public works projects and to increase funding for banks to prevent mortgage foreclosures
- Created the Reconstruction Finance Corporation
- Encouraged farmers to voluntarily cooperate to raise prices
- Promoted voluntarism as a way to ease the crisis
- Avoided spending large amounts of federal money so as not to increase the public debt

But these efforts by the federal government did not stem the economic disaster. By 1932, the unemployment rate was twenty-five percent. Homeless people lived in shanty-towns called “Hoovervilles” in many cities, and the Gross National Product had fallen from a high of over $100 billion in 1929 to $55 billion.

Challenging Hoover in the Presidential campaign of 1932 was the Democratic nominee, Franklin Delano Roosevelt. He projected a positive, energetic, and imaginative image, promising the American people a “new deal.” FDR stated that the economic condition of the country was a bigger emergency than the nation had faced upon entering World War I. He charged the Hoover administration with having ignored “the forgotten man at the bottom of the economic pyramid.”

He believed that that the nation’s economic woes were the result of too much influence by a small group of wealthy men motivated by selfish goals. Their exercise of property rights had interfered with the liberty of individuals, and government...
had to intervene in order to protect the less fortunate. He supported government planning for social and economic problems.

Roosevelt easily won the election in November of 1932 with almost sixty percent of the popular vote. In his First Inaugural Address, he encouraged the American people to find hope in their history of overcoming obstacles. He stated that “the only thing we have to fear is fear itself....” Roosevelt praised the Constitution’s balance between executive and legislative authority. But he stated that he was prepared to ask Congress for more power to deal with the emergency, just as would be the case in the event of a military attack. His plan was one of government action to bring about immediate relief, short-term recovery, and long-term reform.

In the first hundred days of the new administration, Congress quickly approved a wide variety of programs called the First New Deal. The Federal Deposit Insurance Corporation, National Industrial Recovery Act, Civilian Conservation Corps, Public Works Administration, and Tennessee Valley Authority were among the major pieces of legislation. All significantly increased the role and the size of the federal government.

After the 1934 election, Roosevelt worked to extend New Deal reforms through measures designed to provide more benefits to the “forgotten man.” Extensive public works projects, the Social Security Act, increased income taxes on the wealthy, and several programs intended to help farmers, laborers, and the unemployed made up the Second New Deal.

Though the economy was far from healthy after four years of the New Deal, (the unemployment rate in 1936 was still seventeen percent), Roosevelt won over sixty percent of the popular vote in the 1936 Presidential Election.

In his Second Inaugural Address, Roosevelt explained that the Constitution was sufficient to solve the problems of increasingly complex civilization. In expanding the reach of the federal government to solve economic problems, he asserted that Americans were “writing a new chapter in our book of self-government.” But Americans were not, he said, changing the essential foundations established in 1789.

Throughout the 1930s, Herbert Hoover continued to speak out about his opposition to the New Deal. He championed his belief in an America whose foundations were individual liberties, limited governments, and self-reliant, responsible citizens. Roosevelt continued to support legislation and executive actions which promoted the general welfare, increased the role of government in the lives of individuals, and sought to achieve social justice through federal action.

The debate over the federal government’s commitment to “promote the general welfare and secure this blessings of liberty to ourselves and our posterity” (as well as to whether the actions of either President shortened or prolonged the Depression) continues today.

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**Critical Thinking Questions**

1. According to each President, who could best bring about social and economic change?
2. What actions did each President take to respond to the Great Depression?
3. Roosevelt asserted that the expanded reach of the federal government to solve economic problems was not an essential change to the Constitution. Do you agree? Why or why not?
4. In what ways did each President believe that the federal government should “promote the general welfare and secure the blessings of liberty to ourselves and our posterity”?
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<tr>
<th>Number</th>
<th>Excerpt</th>
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<tbody>
<tr>
<td>1</td>
<td>It is the duty of government to avoid regulation as long as equal opportunity to all citizens is not invaded and public rights violated.</td>
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<td>2</td>
<td>These unhappy times call for the building of plans ... that put their faith once more in the forgotten man at the bottom of the economic pyramid.</td>
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<td>3</td>
<td>As I see it, the task of government in relation to business is to assist the development of an economic declaration of rights, an economic constitutional order.</td>
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<td>4</td>
<td>Government should not engage in business in competition with its citizens.</td>
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<td>5</td>
<td>The responsible heads of finance and industry, instead of acting each from himself, must work together to achieve the common good.</td>
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<tr>
<td>6</td>
<td>It is the duty of business to conduct itself so that government regulation or government competition is unnecessary.</td>
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<td>7</td>
<td>The public must be protected from any domination or from predatory business.</td>
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Equality of opportunity is the right of every American. This ideal of individualism based upon equal opportunity of every citizen is the negation of socialism. Equality of opportunity is a fundamental principle of our nation.

The government should assume the function of economic regulation only as a last resort.

Government in this regard is the maintenance of a balance, within which every individual may have a place if he will take it; in which every individual may find safety if he wishes it; in which every individual may attain such power as his ability permits, consistent with his assuming the accompanying responsibility.

If we are to go forward, we must move as a trained and loyal army willing to sacrifice for the good of a common discipline.

Every step of bureaucratizing of the business of our country poisons ... political equality, free speech, free assembly, free press, and equality of opportunity.

We are, I know, ready and willing to submit our lives and our property to [military-like discipline], because it makes possible a leadership which aims at the larger good.

Economic freedom cannot be sacrificed if political freedom is to be preserved.
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<th>The very essence of equality of opportunity and of American individualism is that there shall be no domination by any groups or combination in this republic, whether it be business or political.</th>
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<tr>
<td>16</td>
<td>Our Constitution is so simple, so practical that it is possible always to meet extraordinary needs by changes in emphasis and arrangement without loss of essential form.</td>
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<td>17</td>
<td>Confidence and courage are the essentials of success in carrying out our plan.</td>
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<td>18</td>
<td>The true conservative seeks to protect the system of private property and free enterprise by correcting such injustices and inequalities as arise from it.</td>
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<td>19</td>
<td>We are nearer today to the ideal of the abolition of poverty and fear from the lives of men and women than ever before in any land.</td>
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<td>20</td>
<td>By using the new materials of social justice we have undertaken to erect on the old foundations a more enduring structure for the better use of future generations.</td>
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<td>21</td>
<td>I see one-third of a nation ill-housed, ill-clad; ill-nourished.</td>
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<td>22</td>
<td>The preservation of self-government; the perfection of justice whether in economic or in social fields; the maintenance of order liberty; the denial or domination by any group or class; the building up and preservation of equality of opportunity; the stimulation of initiative and individuality ... [are American ideals.]</td>
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<td>23</td>
<td>Economic depression cannot be cured by legislative action or executive pronouncement.</td>
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<td>24</td>
<td>The federal government is engaged upon the greatest program of waterway, harbor, flood control, public building, highway, and airway improvement in all our history.</td>
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<td>25</td>
<td>In our personal ambitions we are individualists. But in our seeking for economic and political progress as a nation, we all go up; or else we all go down, as one people.</td>
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<td>26</td>
<td>Some new plan is needed to our economic life ... to organize concerted plans for the better use of our resources.</td>
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<td>27</td>
<td>It is not an issue as to whether people shall go hungry or cold in the United States. It is solely a question of the best method by which this hunger and cold shall be prevented.</td>
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<td>28</td>
<td>The opening of the doors of the federal treasury is likely to stifle private giving and thus destroy far more resources than the proposed charity from the government.</td>
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<td>29</td>
<td>Our greatest primary task is to put people to work.</td>
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<td>30</td>
<td>The [New Deal methods and objectives] are an attempt to fasten upon the American people some sort of a system of personal government, of a government of laws; a system of centralization under a political bureaucracy; a system of debt; a system of inflation; a system which would stifle the freedom and liberty of men.</td>
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These gigantic plans of a dictated economy ... were undertaken in disregard of the Constitution.

This is a conflict between a philosophy of orderly individual liberty and a philosophy of government dictation.

Americans must forswear that conception of the acquisition of wealth which, through excessive profits, creates undue private power over private affairs and, to our misfortune, over public affairs as well.

It is the spirit of liberty which made ... the Constitution.

There must never be confusion in the Bill of Rights, the balance of powers, local government, and a government of laws, not men.

I stated that our first job was to restore men to work.

Either we shall have a society based upon ordered liberty and the initiative of the individual, or we shall have a planned society that means dictation, no matter what you call it or who does it.

All emergency works shall be united in a single, new, and greatly enlarged plan.

This generation of Americans has a rendezvous with destiny.

Freedom both requires and makes increased responsibilities.
Labor Day symbolizes our determination to achieve an economic freedom for the average man which will give his political freedom reality.

It is the Supreme Court defending the people’s rights and securities guaranteed by the Constitution which time and again has protected the people from those who seek for economic power or political power, or to suppress free worship and free thoughts.

Hoover excerpts taken from the following:
- Presidential Nomination Acceptance Address (August 11, 1928)
- Campaign Speech (October 22, 1928)
- Inaugural Address (March 4, 1929)
- Second Annual Message to Congress (December 2, 1930)
- Statement to the Press (February 3, 1931)
- Lincoln Birthday Dinner Address (February 12, 1936)
- Crisis to Free Men Speech (June 10, 1936)
- Hands Off the Supreme Court Speech (February 20, 1937)

Hoover excerpts are numbers 1, 4, 6, 7, 8, 12, 14, 15, 19, 22, 23, 24, 27, 28, 30, 31, 32, 34, 35, 36, 37, 40, 42

Roosevelt excerpts taken from the following:
- Address to Conference of Governors (June 2, 1931)
- The Forgotten Man Radio Address (April 7, 1932)
- Commonwealth Club Address (September 23, 1932)
- First Inaugural Address (March 4, 1933)
- First Fireside Chat (March 12, 1933)
- Annual Message to Congress (January 4, 1935)
- The Dignity of Labor Speech (September 6, 1936)
- Second Inaugural Address (January 20, 1937)

Roosevelt excerpts are numbers 2, 3, 5, 9, 10, 11, 13, 16, 17, 18, 20, 21, 25, 26, 29, 33, 38, 39, 41
# The Purposes of the Federal Government

**Directions:** You will be given 1-2 quotes from statements by either Hoover or Roosevelt. For each quote, ask yourself, “Does this quote support the statement in Column A? Column B? both?” Write the number of the quote in the appropriate column, along with a brief paraphrase. (If the quote supports both statements, write the number/paraphrase in the middle.)

<table>
<thead>
<tr>
<th>The main purpose of the federal government is to secure and preserve liberty.</th>
<th>Both</th>
<th>The main purpose of the federal government is to promote and preserve well-being.</th>
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A. Distribute *Constitutional Connection: War and the Constitution* on the following page. Have students look over, but not actually read, the excerpts.

B. Before reading any of the Constitution, which branch appears to have greater war powers?

C. After reading the Constitution, was your prediction about which branch has greater war powers correct? Why or why not?

D. Have students discuss the questions in pairs. After a few moments, reconvene the class for large group sharing.

To provide an introductory overview of the unit, show the six-minute thematic documentary, *Commander and Chief: War and the Constitution*, available at [www.ArticleII.org/War](http://www.ArticleII.org/War).
**War and the Constitution**

*Directions:* Read the following excerpts from the Constitution and then discuss the questions that follow.

**Article I, Section 8 (excerpts)**
The Congress shall have the power...
- To constitute tribunals inferior to the Supreme Court;
- To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;
- To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
- To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
- To provide and maintain a navy;
- To make rules for the government and regulation of the land and naval forces;
- To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;
- To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
- To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

**Article II, Section 2 (excerpts)**
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.

**Article III, Section 2 (excerpts)**
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.

**Questions for Discussion**

1. What does “declare war” mean? Does war have to exist before it can be declared? Or must a declaration come before war can exist?
2. Does the “Necessary and Proper Clause” increase Congress’s war powers? If so, how?
3. What is the role of Commander in Chief?
4. What role might the judicial branch play during wartime?
“Americans love to fight,” General George Patton famously observed. The numbers back his assertion up. With the President and the Congress acting under the provisions of the US Constitution, the United States formally declared war against other nations in five major conflicts—the War of 1812, Mexican-American War, Spanish-American War, World War I, and World War II. Additionally, our Commanders in Chief have deployed military force in more than 300 conflicts abroad and scores of times on North American soil against the Indians. Where do the power and authority for war-making come from?

Under our nation’s first constitution, the Articles of Confederation, many of the Founders concluded that the new republic had insufficient power to defend itself effectively. During the American Revolution, the Confederated Congress could not even pay the soldiers doing the fighting. So during the summer of 1787, the Framers of the new Constitution proposed a much stronger national government to protect American citizens, property, and interests. They argued over the degree to which there should be a stronger executive and more power in Congress to levy taxes to provide for the common defense. But around one principle they united: The military would be under civilian control. Article II, section 2, of the Constitution states, “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.”

It was the sterling character of George Washington—especially evident when he confronted unhappy officers in the Continental Army at Newburgh, New York—that encouraged the Framers to vest this title of Commander in Chief in the executive. The Framers were hopeful that Washington would be the first President under the new Constitution.

However great Washington’s reputation, exclusive war-making powers would not reside in one branch of government or in one office of that government. To concentrate such power would be inimical to freedom. War-making is a grave responsibility, so the power to send Americans into harm’s way should be separated to minimize the effects of imprudence, stupidity, or abuse. Accordingly, Article I, section 8, reserves to Congress the power to declare war; no President can legally do so. Article I, section 8, also gives the legislative branch the power of the purse. So while the Constitution authorizes the existence of a standing army and navy, it gives to Congress the ability to thwart the Commander in Chief by cutting spending.
for the military. Specifically, “no Appropriation of Money to that Use [to raise and support Armies] shall be for a longer Term than two Years.”

To preserve the freedom gained in the War of Independence, the Framers exquisitely distributed the government’s war-making powers: While the President is the duly authorized Commander in Chief, it is the burden of Congress to “provide for the common Defence;” “to raise and support Armies;” “to provide and maintain a Navy;” and “to declare War.”

Interestingly, not once since Pearl Harbor has Congress formally declared war—neither against North Korea nor North Vietnam nor Iraq nor Afghanistan.

Other provisions under the purview of Congress concern the regulation of state militias and the punishment of pirates who violate the law of nations on the high seas. Article I, section 8, even authorizes Congress to “grant Letters of Marque and Reprisal,” a little known provision that allows Congress to authorize private citizens to attack other nations and carry out raids harmful to enemies’ interests.

Already in the early days of the republic, Commanders in Chief and Congress engaged in a tug-of-war over war. Who gets to decide whether to send US forces into an elective war when there is no imminent threat? Absent the advice and consent of Congress, does the President have the right to commence armed conflict? Once conflict has broken out, which branch of government has the upper hand in setting war policy? How far does executive privilege extend? The never-ending tension between the two branches of government has on occasion required the US Supreme Court to step in as a referee. But it remains a preeminently political struggle.

The highly controversial War of 1812 illustrates this tension. This “second war of independence” against Britain put the separation of powers to a severe test, and happily it established that the basic constitutional mechanisms for declaring and waging war worked. It was the first conflict in which a President sent an adopted declaration of war to Congress. The vote in the Senate was close: nineteen to thirteen; in the House it was seventy-nine to forty-nine. Given how divided the nation was, it was critical that Madison had a congressionally approved declaration of war. That legal declaration gave him grounds to upbraid the House when it would not pay for the navy needed to take on the world’s greatest sea power.

From the outset, Madison botched much of the war effort. It was no surprise that he also had to contend with the open hostility of the New England states, which at one point flirted with secession and the idea of negotiating a separate peace. Despite the inconclusive nature of the contest, the war strengthened Americans’ faith in the rule of law in general, and the Constitution in particular, during a time of war—no small achievement.

Political and constitutional sparks similar to those generated by the War of 1812 produced flare-ups in subsequent conflicts as well. In the Mexican-American War, for instance, Congressman Abraham Lincoln kept introducing his famous “spot resolutions” that challenged President James K. Polk’s pretext to go to war. Once he was President, Lincoln in turn would be challenged for actions taken during the Civil War, especially the legality of suspending habeas corpus. Article I, section 9, of the Constitution stipulates that Congress has the power to suspend this fundamental right “in Cases of Rebellion,” but in April 1861 Lincoln argued that during wartime he, as Commander in Chief, also possessed the authority to do so.

The tug-of-war between the Legislative
and Executive Branches became especially tense more than one century later during the late 1960s and early 1970s. Because Korea and Vietnam seemed to be unwinnable conflicts that were fought without a declaration of war, a growing number of Americans became concerned that Congress was losing power vis-à-vis the Commander in Chief. Finally in 1973, Democrats in Congress led the charge to pass the War Powers Resolution by a sizeable majority (in the process overriding Republican President Richard Nixon’s veto). The law stipulated that the Commander in Chief could send US armed forces into action only by authorization of Congress or if the United States were already under attack or serious threat. Within forty-eight hours of committing armed forces to military action, the President would have to notify Congress. Armed forces could not remain more than sixty days on foreign soil without congressional authorization of the use of military force or a declaration of war.

Virtually every President since Nixon has expressed strategic and constitutional reservations about the War Powers Resolution. Wartime relations between the Executive and Legislative Branches further became strained during the George W. Bush administration. Bush was the longest-serving wartime Commander in Chief in US history. In the weeks following the September eleventh attacks, the President received broad (if not deep) bipartisan support to go to war against the Taliban government and the al-Qaeda terrorists they harbored in Afghanistan. But in time, the second war in Iraq led to vehement opposition that gave new life to the War Powers Resolution. When Democrats took back control of Congress in the midterm elections of 2006, some members of the House were even calling for the impeachment of Bush, for allegedly abusing his powers as Commander in Chief.

These allegations were rooted in opposition to the Bush administration’s understanding of the legal status of captured terrorists. The administration defined Taliban and Al Qaeda prisoners as “unlawful enemy combatants,” thus making them ineligible for the protections of the Geneva Convention. Because terrorists are non-state actors—not uniformed members of a sovereign military—they could not be considered prisoners of war. Viewing them as enemy combatants, President Bush used his executive power to establish Military Tribunals to try prisoners and ordered that they be imprisoned outside American borders at the US Naval base at Guantanamo Bay. They would also be denied additional legal rights afforded to US citizens, including the writ of habeas corpus.

The constitutionality of President Bush’s decision to deny enemy combatants habeas
corpus appeared before the Supreme Court in the 2006 case, *Hamdan v. Rumsfeld*. The Court ruled against the Administration, arguing that neither executive authority, nor the constitutional powers vested in Congress could establish and try terrorists in Military Commissions. Absent that authority, Justice John Paul Stevens argued, the Commissions would have to “comply with the ordinary laws of the United States and the laws of war”—including Geneva Convention protections.

The forty-third President fought back by getting the Republican-led Congress to pass the Military Commission Act (MCA) of 2006, which addressed wartime conditions when habeas corpus did not apply to unlawful enemy combatants. In 2008, the Court ruled in *Boumediene v. Bush* that the MCA violated the Suspension Clause of the Constitution—those imprisoned at Guantanamo Bay could indeed file for habeas corpus.

The debates over the separation of war powers are hardly over. They have characterized American history since the beginning. And that is a good thing. Sending Americans in uniform into harm’s way is the most agonizing decision a US President makes. The men and women willing to make the ultimate sacrifice deserve nothing less than a free society’s most sober judgment.

*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

The War of 1812 was the United States of America’s first declared war, but it was far from being the nation’s first foreign conflict. Presidents George Washington, John Adams, Thomas Jefferson, and James Madison all countenanced various adversaries and all took different approaches to exercising the powers vested in the President under the Constitution. Washington, concerned with avoiding foreign entanglements, declared the US would stay neutral when France and England went to war, and set off a firestorm of criticism for doing so. Adams also succeeded in avoiding war after attempting to engage France diplomatically and pursuing domestic policies designed to quiet support for the French. Jefferson, frustrated with his two predecessors for having continued the traditional practice of paying off the Barbary pirates, declared an end to the bribes and sent a naval force to deal with the pirates. Madison sought and received the first-ever congressional declaration of war (against Britain), and also declared victory against the Barbary pirates after a second skirmish in 1815.

Objectives

Students will:
- Identify ways the nation’s first four Presidents exercised their constitutional power as Commander in Chief.
- Evaluate their various approaches to foreign enemies.
- Assess what conditions require declarations of war from Congress.

Critical Engagement Question

How did the country’s first four Presidents exercise their powers as Commander in Chief?

Materials
- Handout A: War in the Early Republic
- Handout B: Name That President

Background/Homework

Have students read Handout A: War in the Early Republic and answer the questions.

Warm-Up [15 minutes]

A. Divide students into groups of four. Within each group, assign one student each to play the role of George Washington, John Adams, Thomas Jefferson, and James Madison.
B. Have students use Handout A as a reference to review the actions they took as President to direct foreign policy/avoid war/wage war. Then have them summarize those actions in two or three sentences on their own paper.
**Activity [25 minutes]**

A. Put up a transparency of Handout B: Name That President.

B. Revealing one statement at a time from Section I, have students playing the role of the President described stand up when a statement applies to them. Note: Some statements may apply to more than one President.

C. Clarify any questions students have as the activity progresses.

D. Moving on to Section II of Handout B, continue revealing one statement at a time. Have groups discuss the statement among themselves. Then discuss the question of who the statement applies to as a large group.

*Variation: For any/all of the statements, have one group at a time come to the front of the room to debate the question in front of the class and have students vote on the answer. Encourage students to stay “in character” and lobby/persuade the class of their point of view.*

**Wrap-Up [10 minutes]**

Ask students to review what they wrote for their answer to question number three on Handout A. Has their thinking on this question changed at all as a result of the day’s activity? Why or why not? Discuss student responses as a large group. In addition, ask the class:

- Has the world ever been completely at peace?
- How many wars are taking place right now?
- Does the Constitution provide sufficient guidance to help Presidents and Congress know when to declare war?

**Homework**

Have students apply what they have learned to the present day and the wars in Iraq and Afghanistan. Has Congress declared war in either of these conflicts? Should it? Have them write a letter to their Senators and Representative in the US Congress expressing their viewpoint.

**Extension**

After two undeclared wars—one in 1801 and one in 1815—the US succeeded in defeating the Barbary pirates. Ironically, it was President James Madison who declared victory against them in his Seventh Message to Congress in 1815. Have students do additional research into the methods used by the first four Presidents of the United States in dealing with the threats posed by the pirates.
The Constitution divides war powers between the President and Congress. Congress has the power to declare war, raise the armed forces, and approve military budgets. The President is Commander in Chief of the military. President James Madison asked for and received a declaration of war against England before the War of 1812. It was the United States's first declared war, but it was not the first foreign conflict for the young nation.

George Washington, John Adams and the “Quasi-War” with France

France declared war on England in 1793. Many wanted the US to take sides, but President George Washington believed it was vital for the US to avoid foreign entanglements. He declared that the United States would stay neutral. This “neutrality proclamation” set off a firestorm of debate. Did the President have the constitutional power to declare neutrality, or was this something only Congress could do? The debate settled with most taking Washington’s view that it was the executive’s job to direct the nation’s foreign policy, and not lawmakers.

The fighting between France and England raged. John Adams was elected President in 1800. France suspended commerce with the US, and seized hundreds of American ships. Congress appropriated money to increase the navy and authorized raising a provisional army.

In his constitutional role as director of the nation’s foreign affairs, the President is sometimes called the nation’s “Chief Diplomat.” Adams used diplomacy to try to avoid war. In 1797, Adams sent the ambassadors he had appointed to France. France demanded a bribe, so the American diplomats left. The XYZ Affair (as it came to be called as the French diplomats were unnamed) inflamed many Americans’ desire for war. In the end, Adams succeeded in avoiding war with France, but he lost the presidency to Thomas Jefferson in the election of 1800.

Thomas Jefferson and the Barbary Pirates

President Jefferson inherited not only tensions with France, but also conflict with the Barbary pirates. For hundreds of years, pirates from the Islamic countries on the coast of North Africa had controlled the Mediterranean Sea. They plundered and looted ships. They captured sailors, holding them for ransom or selling them into the Ottoman (Turkish) slave trade. These pirates considered themselves at war with any nation with which they did not have a “treaty.” In fact, these “treaties” were demands for “tributes” or payments.

The British fleet had defended American ships from the Barbary pirates while it was part of England. Once the US won its independence, however, US ships were on their own. Congress appropriated money for “tributes” as early as 1784, but the attacks continued. By 1794, the pirates were holding dozens of US citizens for ransom. Thomas Jefferson, who was then Washington’s Secretary of State, advised Congress to declare war on the pirates. Congress did not heed his advice. President Washington sent diplomats to negotiate for the prisoners’ release, but with no success.

When John Adams
became President in 1797, he continued paying the pirates. Congress continued to authorize payments. By the turn of the century, Congress was paying twenty percent of the US's annual budget to the pirates.

Thomas Jefferson took office in 1801. Jefferson, who believed that paying off the pirates only led to more demands, announced that there would be no more tributes paid. Tripoli demanded more money, but Jefferson refused to pay. Tripoli declared war on the US.

Jefferson announced in his First Annual Message to Congress, “Tripoli, the least considerable of the Barbary States, had come forward with demands unfounded either in right or in compact, and had [threatened] war, on our failure to comply before a given day. The style of the demand admitted but one answer. I sent a small squadron of frigates into the Mediterranean....”

Jefferson took this defensive military action as Commander in Chief without seeking a declaration of war from Congress. He believed that a broader response would be needed, and so he asked Congress for a formal resolution. In response, Congress authorized an expanded force. This force succeeded in subduing the pirates, at least temporarily.

**The First Declared War**

President James Madison was elected in 1808. Tensions with England were high, as they had been for the last thirty years. The US objected to impressment (forced recruitment) of American sailors into British ships, as well as British blockades on American trade. Britain was also helping American Indians in the Northwest to challenge US westward expansion.

Madison believed the US had two choices: go to war against a much more powerful navy, or submit and confirm what many in the world believed—that the US was not to be taken seriously as an independent nation.

Madison asked Congress for a declaration of war against England. His message read in part, “Whether the United States shall continue passive under [England’s] ... accumulating wrongs, or, opposing force to force in defense of their national rights, shall commit a just cause into the hands of the Almighty Disposer of Events... is a solemn question which the Constitution wisely confides to the legislative department of the Government....” Congress took Madison’s recommendation and declared war between the US and England. The President of the United States was “authorized to use the whole land and naval force of the United States to carry the same into effect.”

The war was unpopular and, most agree, managed badly by Madison. The hostilities ended in a stalemate in early 1815, but the world could no longer deny that the US was an independent power to be taken seriously. For this reason, some have called the War of 1812 “the second revolutionary war.”

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**Critical Thinking Questions**

1. What foreign conflicts were faced by Presidents Washington, Adams, Jefferson, and Madison?
2. Why did James Madison say that “the Constitution wisely confides to the legislative department of the Government” the power to decide whether to declare war?
3. In your judgment, does every military action require a declaration of war from Congress? If not, how can one determine those actions which require a declaration of war from those that don’t?
Section I

1. I issued a “neutrality proclamation” declaring the US neutral in the war between England and France.

2. During my term, Congress was paying twenty percent of the US’s annual revenue to the Barbary pirates.

3. I avoided a war with France that seemed inescapable.

4. I relied mainly on diplomacy in dealing with foreign conflicts.

5. I put an end to a traditional practice that had gone on for hundreds of years: paying off the Barbary pirates.

6. I thought it was very important for the US to avoid foreign entanglements.

7. I asked for and received the US’s first declaration of war.

8. I declared victory against a foreign enemy.

Section II

1. I did something unconstitutional.

2. I had the hardest job of the first four Presidents.

3. I made the best decisions as Commander In Chief.

4. I made the worst decisions as Commander in Chief.
CONSTITUTIONAL CONNECTION

To create a context for this lesson, have students complete Constitutional Connection: War and the Constitution.

LYNDON JOHNSON AND RICHARD NIXON

OVERVIEW

Beginning in 1812 and for the next hundred years, US Presidents asked for and received congressional declarations of war against England, Mexico, Spain, Japan, and European powers. During the Cold War, President Harry Truman sent troops to Korea as part of a UN force without a congressional declaration of war. President John F. Kennedy sent troops to defend South Vietnam. Congress never declared war, but years later passed the Tonkin Resolution authorizing President Lyndon Johnson to use force against North Vietnam. In reaction to US involvement in Vietnam, Congress passed the War Powers Act which limited the President’s authority to commit American troops abroad without Congress’s approval. The law was passed over the veto of President Richard Nixon, who argued the law was an abridgement of the President’s authority as Commander in Chief. The Act raises the questions: How far does the President’s power as Commander in Chief extend? And, how much of that power can be limited by Congress?

OBJECTIVES

Students will:

- Understand events leading up to passage of the War Powers Resolution.
- Assess the meaning of constitutional provisions about war.
- Evaluate the constitutionality of the War Powers Resolution.

CRITICAL ENGAGEMENT QUESTION

Did the War Powers Resolution take too much power away from the President, or did it take too much power away from Congress?

MATERIALS

- Handout A: Lyndon Johnson, Richard Nixon, and the War Powers Resolution
- Handout B: War and the Constitutional Convention
- Handout C: The War Powers Resolution
- Handout D: War with Svovenia?
- Handout E: Debate Identity Slips

BACKGROUND/HOMEWORK

Have students read Handout A: Lyndon Johnson, Richard Nixon, and the War Powers Resolution and answer the questions.

DAY ONE

ACTIVITY I [ 20 minutes ]

A. On the board, write two phrases: “To make war” and “To declare war.”
B. Ask students what the difference is between these two words. Specifically, which is the broader power?
C. Distribute Handout B: War and the Constitutional Convention. Assign roles and read the scene aloud.
D. As large group, trace the arguments and read aloud the final wording of Congress's power in Article I, Section 8.
E. Debrief students on the scene. As a large group, discuss the following questions.
   - How does the Constitution distribute war powers between the President and Congress?
   - Does “declare war” mean the same thing as “start war”?
   - Why do you think the Founders decided on this arrangement?

**Activity II**  [30 minutes]
A. Distribute Handout C: The War Powers Resolution. Give students time to read the excerpts from the law and write down in basic, every-day language what the law says and requires.
B. Using a transparency of Handout C, go over responses.
C. Ask students what they think the delegates at the Constitutional Convention would have thought about this law.

**Day Two**
**Activity**  [30 minutes]
A. Distribute Handout D: War with Swovenia? Have students read the scenario and then give them each a slip from Handout E: Debate Identity Slips. Have students assemble into groups made up of Executive Branch, Senate, and House of Representatives. (Students can share roles in large classes.) If possible, have the two legislative chambers near each other with the Executive Branch on a third side of the room.
B. Have the groups discuss the scenario and present some initial opinions on their views. They should also consult Handout C: The War Powers Resolution.
C. Have “the President and his cabinet” address a “joint session of Congress” arguing his or her justification for acting.
D. Legislators will follow up with a debate and then a vote – to declare war, to “authorize the use of force,” or neither.
E. Encourage both the President and Congress to refer to the War Powers Resolution in their remarks.

**Wrap-Up**  [15 minutes]
Debrief the class on the activity and conduct a large group discussion to answer the following questions:
   - Contrast the decision-making processes by the President and by members of Congress when it comes to war. What does the President have to consider? What do members of Congress have to consider?
   - Nixon vetoed the War Powers Resolution because he argued it unconstitutionally limited the President’s power. What arguments might be made that the War Powers Resolution actually increased the President’s power?

**Homework**
Have students read Nixon's entire veto message. They should summarize and respond to his arguments against the War Powers Resolution. The document can be found at www.ArticleII.org/units/War.

**The Issue Endures**
Debate over the War Powers Act continues today. Critics want the law repealed for apparently contradictory constitutional reasons—some argue it takes too much power away from the President and gives too much to Congress, while others believe the President retains too much power at the expense of Congress. Have students work in groups to research arguments on both sides and answer the following questions:
   - What are the strongest arguments on each side?
   - How do the different arguments against the War Powers Act reveal different ways of interpreting the Constitution?
The Founders wanted to improve on the Articles of Confederation. Under the Articles, the central government had practically no power to wage war. The Confederation Congress could declare war, but had no army or taxing power to fund one. But the Founders also wanted to prevent the central government from having too much power. Their experiences under the British King had proven to them that limits on executive power were essential.

The Constitutional Convention

The men who gathered to write the Constitution agreed that in a republic, the President alone should not be able to start wars. This power would have made the President too much like a King. At first, they gave the power to “make war” to Congress. But after some discussion, they agreed that the legislature was too large and too slow to do this effectively. They changed “make war” to “declare war.” This ensured that the President could not declare war on his own (but left him with the power, as Commander in Chief, to repel attacks without waiting for approval from Congress). In addition to having the power to declare war, Congress was also given the power to approve the military budget.

On the other hand, the President would be Commander in Chief of the military forces. This means that once war is declared, the President is in charge of it. All military officials are ultimately accountable to the President. The delegates at the Constitutional Convention made this decision because an individual is more suited to swift action and decision making than a large body like Congress.

Korea and Vietnam

Congress declared war in the War of 1812, the Mexican-American War, Spanish-American War, World War I, and World War II. In 1947, President Harry Truman announced that the US would provide assistance to any nation in the world that was threatened by Communism. When communist North Korea invaded free South Korea in 1950, Truman sent US troops as part of a combined United Nations force defending South Korea. Truman did not ask for a declaration of war, and described the troops’ mission as a “police action.” The undeclared war ended in an armistice in 1953 with both sides claiming victory.

In 1961, President John F. Kennedy continued the Truman Doctrine of assisting countries threatened by Communism by sending supplies and military advisors to South Vietnam in their fight against Communist North Vietnam. US troops were in combat less than a year later, though there had been no declaration of war from Congress.

President Kennedy was assassinated in 1963 and President Lyndon Johnson took over the management of the war in Vietnam. Congress passed the Gulf of Tonkin Resolution, affirming that the US was “prepared, as the President determines, to take all necessary steps, including the use of armed force” to assist South Vietnam. Though there was no declaration of war, Johnson understood the Gulf of Tonkin Resolution as empowering him to escalate the fighting.

The war became increasingly unpopular at home. Critics argued there was no clear objective, the
US did not seem to be winning, and casualties were mounting. Under a barrage of criticism, President Johnson announced he would not run for a second term.

After President Richard Nixon was inaugurated in 1969, he began secret bombings in Cambodia. These missions were kept secret from Congress and the American people for more than a year. News of the My Lai massacre (where US troops killed unarmed civilians and children) broke in 1969. Distrust of government intensified when the Pentagon Papers (stolen secret documents revealing the government had misled the people about the Vietnam War) were published in 1971.

**The War Powers Resolution**

By 1973, all American troops had left Vietnam, and the Senate Armed Service Committee had begun hearings on the secret bombings in Cambodia. Congress ordered an immediate end to the bombing raids.

At this same time, Congress also drew up the War Powers Resolution. The Resolution required the President to consult Congress before the start of hostilities, and report regularly on the deployment of US troops. Further, the President would have to withdraw forces within sixty days if Congress has not declared war or authorized the use of force. When it came to his desk, Nixon vetoed the War Powers Resolution. In his veto message, he wrote that the Resolution “would attempt to take away, by a mere legislative act, authorities which the President has properly exercised under the Constitution for almost 200 years. ... The only way in which the constitutional powers of a branch of the Government can be altered is by amending the Constitution...” He noted that Congress already had a constitutional check on the President’s power with its appropriations (funding) power.

Congress passed the law over President Nixon’s veto with the necessary two-thirds vote in both Houses.

Though Presidents have provided Congress with reports consistent with the War Powers Resolution since its passage, one former US Senator noted in 2008 that no President had ever submitted the precise kinds of reports to Congress required by the Act despite the US's involvement in numerous armed conflicts since 1973. A bipartisan panel recommended the repeal of the War Powers Resolution in 2008, but debate over what kind of law should replace it, if any, continues.

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**Critical Thinking Questions**

1. How does the Constitution distribute war powers between the President and Congress, and why did the Founders decide on this arrangement?
2. What was the War Powers Resolution of 1973?
3. Why did President Nixon veto it?
4. Keeping in mind the constitutional war powers of Congress and the President, how would you assess the constitutionality of the War Powers Resolution?
5. Why do you think there has been no declared war since World War II, yet the US has been almost constantly engaged in military action? What is the difference between Congress “authorizing the President to use force” and declaring war? Who bears more responsibility in each case? Which, if any, seems to lead to better outcomes for the US?
The following conversation is adapted from quotations from Madison’s Notes of the Convention.

IN CONVENTION  
August 17, 1787  

“To make war.”

Mr. PINKNEY: I oppose the vesting of the power to make war in the Legislature. Its proceedings are too slow. ... The House of Representatives would be too numerous for such deliberations....

Mr. BUTLER: The objections against the Legislature can also be made against the Senate. I am for vesting the power in the President, who will have all the needed qualities, and will not make war but when the Nation will support it.

Mr. MADISON and Mr. GERRY: We move to insert “declare,” striking out “make” war; leaving to the Executive the power to repel sudden attacks.

Mr. SHERMAN: I think this stands very well. The Executive should be able to repel and not to commence [start] war....

THE US CONSTITUTION

Article I, Section 8 (excerpts)
Congress shall have the power:...To declare war...To raise and support armies...To provide and maintain a navy... To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Article II, Section 1
The executive power shall be vested in a President of the United States of America. ...  
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...
## The War Powers Resolution

**Directions:** Read and discuss the following excerpts from the War Powers Resolution.

<table>
<thead>
<tr>
<th>War Powers Resolution</th>
<th>In Your Own Words</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is the purpose of this [Act] to fulfill the intent of the framers of the Constitution of the United States and insures that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities</td>
<td></td>
</tr>
<tr>
<td>...The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.....</td>
<td></td>
</tr>
<tr>
<td>The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities...</td>
<td></td>
</tr>
<tr>
<td><strong>War Powers Resolution</strong></td>
<td><strong>In Your Own Words</strong></td>
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</tr>
<tr>
<td>In the absence of a declaration of war... the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth— (A) the circumstances necessitating the introduction of United States Armed Forces; (B) the constitutional and legislative authority under which such introduction took place; and (C) the estimated scope and duration of the hostilities or involvement.</td>
<td></td>
</tr>
<tr>
<td>Within sixty calendar days ... the President shall terminate any use of United States Armed Forces ... unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States.</td>
<td></td>
</tr>
<tr>
<td>[A]t any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs....</td>
<td></td>
</tr>
</tbody>
</table>
WAR WITH “SVOVENIA”? 

Directions: Read and discuss the following fictional scenario.

The President has just gone on television and announced important information. He has received intelligence that the nation of Svoenia has been building highly dangerous chemical and biological weapons. His cabinet members agree the intelligence is solid and trustworthy. Svoenia, a long-time adversary of the United States, is located near several American allies who feel threatened by these developments. The President has sent several Air Force units to bomb the facilities in Svoenia used to make these weapons and believes that a more sustained ground force will be necessary to ensure the weapons are not completed or used against American or ally targets.
Debate Identity Slips

House of Representatives

You are the Speaker of the House. You don’t think the US should go to war to defend other countries.

You are a Representative from the same political party as the President. Your district has a large pacifist population. You are up for reelection.

You are a Representative from the President’s rival political party. You oppose the war, and you hope to make a name for yourself as an anti-war candidate in the next election.

You are a Representative from the President’s rival political party. You think the President is power-hungry.

You are a Representative from a region of the country that supports the idea of war with Svovenia.

You are a Representative from a region of the country where several large defense contractors are based.

You are a Representative serving on the House Foreign Affairs Committee. You could be persuaded to vote to declare war, but you oppose authorizing the use of force and argue that wars are difficult to get out of once they have begun.

You are a Representative from a region with a large population of Svovenian-Americans.

Senate

You are the President pro tempore of the Senate. You think Svovenia is a serious threat to America’s security and support going to war.
**Debate Identity Slips (cont.)**

<table>
<thead>
<tr>
<th>Role</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Chairman of the Senate Armed Services Committee</strong></td>
<td>You could be persuaded to vote to declare war, but you oppose authorizing the use of force and argue that wars are difficult to get out of once they’re begun.</td>
</tr>
<tr>
<td><strong>Senator from the President’s political party</strong></td>
<td>You think the President is going too far in calling for military action against Svovenia but you don’t want to rock the boat.</td>
</tr>
<tr>
<td><strong>Senator from the President’s political party</strong></td>
<td>You support military action against Svovenia, but polls in your state show strong opposition to the President.</td>
</tr>
<tr>
<td><strong>Senator</strong></td>
<td>You oppose going to war, but support for it in your state is strong.</td>
</tr>
<tr>
<td><strong>President of the United States</strong></td>
<td>You’ve been President for six years and your approval ratings are average. You believe war against Svovenia is necessary, and will also ensure your good legacy.</td>
</tr>
<tr>
<td><strong>Vice President</strong></td>
<td>You support war with Svovenia, especially because you believe your support will help your chances of winning when you run for President next year.</td>
</tr>
<tr>
<td><strong>Secretary of Defense</strong></td>
<td>You first brought the possibility of war against Svovenia to the President’s attention, and you’ve taken some criticism in the media for it.</td>
</tr>
<tr>
<td><strong>Secretary of Homeland Security</strong></td>
<td>You and the Secretary of Defense have been urging the President to go to war against Svovenia.</td>
</tr>
<tr>
<td><strong>Secretary of State</strong></td>
<td>You oppose the war, and you have been urging the President to find a diplomatic solution.</td>
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</tbody>
</table>
OVERVIEW

After the September 11, 2001 terrorist attacks on the United States, George W. Bush demanded that the Taliban government in Afghanistan turn over Osama bin Laden to the US as well as shut down Al-Qaeda training camps in the country. When the Taliban refused, Bush ordered strikes on the country. After hundreds of enemy combatants were captured on the battlefield in Afghanistan, in the US, and around the world, the question of how detainees in the War on Terror should be treated became problematic. Were accused terrorists criminals, or were they illegal combatants (aggressors guilty of breaking laws of war)? Bush’s answer to that question—that they were illegal combatants not entitled to due process protections of US law, but subject to Military Tribunals—became harder and harder to justify to the American people as time wore on.

OBJECTIVES

Students will:

- Analyze constitutional arguments on the nature of terrorist acts.
- Evaluate whether accused foreign terrorists should be afforded all constitutional due process protections.

CRITICAL ENGAGEMENT QUESTION

Should accused foreign terrorists be afforded all constitutional due process protections?

MATERIALS

- Handout A: George W. Bush and the War on Terror
- Handout B: September Eleventh True or False
- Handout C: Data Points

BACKGROUND/HOMEWORK

Have students read Handout A: George W. Bush and the War on Terror and answer the questions.

WARM-UP [10 minutes]

Put up an overhead of Handout B: September Eleventh True or False. Revealing one statement at a time, ask the class to respond to each statement. Then reveal and discuss each answer.
Activity [30 minutes]
A. On the board, write the question: Are acts of terror acts of war, or are they criminal acts?
B. Distribute Handout C: Data Points. Have students discuss the chart in pairs.
C. After ten or fifteen minutes, reconvene the class and ask students to share their responses.

Wrap-Up [10 minutes]
As a large group, discuss the questions:
- In 2001, to what degree was Bush’s response consistent with historical precedent?
- The President has the constitutional duty to enforce the law, as well as the constitutional role of Commander in Chief of the military. How should the President understand these roles with respect to terrorism?
- How should the President respond when an attack is by an “unconventional enemy,” i.e. one not officially associated with a foreign state?
- What arguments did Bush offer to justify his argument that accused foreign terrorists should not be afforded all constitutional due process protections?
- What arguments could be made that they should be afforded all those protections?

Homework
Have students make an illustrated timeline of major national events, federal legislation, and Supreme Court cases about the War on Terror since September 11, 2001. They should use Handout A as well as their textbooks or other resources. Each event should be accompanied by two or three sentences explaining its significance.

Extensions
Have students do additional research to compare and contrast the legal treatment of admitted and/or accused terrorists under the Bush Administration and the Obama Administration.
On September 11, 2001, radical Islamic terrorists hijacked and crashed four passenger jets in New York, Washington, DC, and Pennsylvania. The hijackers crashed two jets into the World Trade Center, bringing down the twin towers. The death toll was 2,605. One plane was crashed into the Pentagon, damaging the building and killing 125 people. The fourth jet was crashed into a field in Pennsylvania as forty passengers and crew fought back against the terrorists. There were no survivors.

Responders on that day included police, firefighters, and service people from all branches of the US military. More than 400 emergency workers died in their heroic attempts to help. In all, 2,976 people, mostly civilians, from more than ninety countries, lost their lives on that day. Millions more lost their sense of security.

Bush Address the Nation

In the days following the attacks, US and British intelligence confirmed that Al-Qaeda, led by Osama bin Laden, had planned and carried out the attacks. On September 20, President George W. Bush addressed Americans—many of whom had never heard of Al-Qaeda—in a televised speech before a joint session of Congress.

Bush contrasted the September 11 attacks on civilian targets with December 7, 1941 when the Japanese bombed the naval base at Pearl Harbor.

He told the American people about Al-Qaeda. He explained that its members practiced “a fringe form of Islamic extremism,” and that their “directive commands them to kill Christians and Jews, to kill all Americans and make no distinctions among military and civilians, including women and children.” He explained that while the group was linked to more than sixty countries, its base was Afghanistan. He condemned the Taliban regime which controlled Afghanistan, and announced the beginning of a War on Terror. “Our war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.”

The President continued, “I have a message for our military: Be ready. I have called the armed forces to alert, and there is a reason.”

Bush identified Osama Bin Laden as the “prime suspect” in the attacks. The US demanded that the Taliban deliver Bin Laden and other Al Qaeda leaders to the US, and shut down the numerous Al Qaeda training camps in the country. The Taliban refused. The US began bombing Afghanistan on October 7, 2001.

Two months later, in November of 2001, President Bush approved the use of Military Tribunals to try accused terrorists, including many individuals captured in Afghanistan. Bush said that the Tribunals were needed to “to protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks.” A detention camp was set up at the US Naval base in Guantanamo Bay, Cuba.

Military Tribunals

Military Tribunals are court proceedings used to try the enemy for violations of the laws of war. Military Tribunals differ from criminal trials in the civilian justice system in
some important ways. Military Tribunals are not required to preserve many of the rights protected in the Bill of Rights. For example, the Sixth Amendment requires criminal trials to be open to the public, but Military Tribunals can be conducted in secret. Strict rules of evidence in the civilian justice system may not apply in a Military Tribunal. Decisions of Military Tribunals cannot be appealed in federal court. Rather, the President, as Commander in Chief, makes the final decision in reviewed cases.

The first Military Tribunals in the US were held during the Revolutionary War, and have been a part of every war in US history through World War II. During World War II, the Supreme Court unanimously upheld their use for unlawful combatants, even when the accused were US citizens. (At the time Bush was President, no President had ever asserted that the US should extend Bill of Rights protections to foreigners accused of making war against the US.)

A little over a month after the first prisoners arrived at Guantanamo Bay, the first habeas corpus petition (a petition challenging detention) was filed. That case was dismissed. More petitions followed and were also dismissed.

The Years that Followed

Public unease with the indefinite detention of suspected terrorists at Guantanamo Bay grew. Bush led the US invasion of Iraq in March of 2003 on the suspicion that Saddam Hussein had weapons of mass destruction. Revelations that no such weapons were found and that Iraqi prisoners had been abused at Abu-Ghraib prison led to lower public approval of the War on Terror. The US Supreme Court stopped dismissing habeas corpus petitions and progressively expanded the rights afforded to detainees at the camp.

In 2004, the Supreme Court held in Hamdi v. Rumsfeld that habeas corpus did not depend on citizenship status. The President responded by convincing the Republican-led Congress to pass the Military Commissions Act of 2006, which addressed wartime conditions when habeas corpus did not apply to foreign enemy combatants.

In 2006, the Supreme Court held that detainees had the right to appeal their detentions in federal court case of Hamdan v. Rumsfeld.

The Supreme Court continued to chip away at the President and Congress’s power to establish the Military Tribunals in Boumediene v. Bush (2008). The Court found the Military Commissions Act of 2006 to be an unconstitutional suspension of habeas corpus. Enemy combatant detainees at Guantanamo Bay were entitled to the Fifth Amendment’s protection of due process.

In November of 2008, Barack Obama was elected President. One of his campaign pledges was to close the detention center at Guantanamo Bay by January 2010.

US troops remain in Afghanistan and Iraq, working to prevent the strengthening of Al-Qaeda.

---

**Critical Thinking Questions**

1. What ultimatum did President Bush give to the Taliban on September 20, 2001?
2. What are two differences between criminal trials and Military Tribunals?
3. How did the Supreme Court initially respond to habeas corpus petitions from detainees at Guantanamo Bay? How did the Court respond in 2004, 2006, and 2007?
4. Should admitted and/or accused foreign terrorists be afforded all constitutional due process protections? Explain your answer.
1. President George W. Bush was the first President to order strikes on Islamic terrorists.

   False: Thomas Jefferson was the first.

2. Since most of the September 11 hijackers were from Saudi Arabia, Bush ordered military strikes against that country.

   False: He ordered a strike against Afghanistan, where the Taliban government was harboring Osama bin Laden, the leader of the hijackers.

3. The overwhelming majority of victims on September 11, 2001 were civilians.

   True

4. President Bush’s approval rating was over 90% when Congress enacted the USA-PATRIOT Act (an act strengthening law enforcement power to find and capture terrorists.)

   True

5. The US declared war on Afghanistan when the Taliban government refused to hand over Osama bin Laden.

   False: Congress never declared war. (And only Congress has the power to do so.)

6. In December of 2001, a CBS poll showed that a large majority of Americans supported giving President Bush “special war powers”.

   True
Directions: Read the information in the middle of the chart. If the information could be used to support the argument that terrorist acts are acts of war, place a check on the left side of the chart. If the information supports the argument that terrorist acts are criminal acts, place a check on the right side of the chart. If the information supports neither, leave the row blank.

<table>
<thead>
<tr>
<th>Act of War</th>
<th>Criminal Act</th>
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<tbody>
<tr>
<td>Military tribunals for enemy combatants with limited due process protections</td>
<td>All constitutional due process protections for accused persons</td>
</tr>
</tbody>
</table>

1. “Enemy combatants who without uniform come secretly through the lines for the purpose of waging war by destruction of life or property, are ... generally deemed ... to be offenders against the law of war subject to trial and punishment by Military Tribunals.” *Ex Parte Quirin* (1942)

2. Some terrorists are supported by governments who openly call for the destruction of other countries.

3. Congress never declared war against Afghanistan; it did, however, authorize the President to use military force against “those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”

4. When the hijackers boarded their four flights on September 11, 2001, they were not wearing Al-Qaeda uniforms or any military uniform; they were dressed like ordinary civilians.
### DATA POINTS (CONT.)

<table>
<thead>
<tr>
<th>ACT OF WAR</th>
<th>CRIMINAL ACT</th>
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<tbody>
<tr>
<td>Military tribunals for enemy combatants with limited due process protections</td>
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<td></td>
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<td>5. Evidence presented at criminal trials will be made public in the US and international press.</td>
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<td>6. The North Atlantic Treaty Organization (NATO) invoked its charter for the first time in its history in response to the attacks: The September eleventh attacks were an attack on all the NATO allies.</td>
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<td>7. Some, but not all, detainees at Guantanamo Bay are accused of (or admit to) planning the September 11 attacks. Others as suspected of planning or aiding in other terrorist acts.</td>
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<td>8. Constitutional protections against self-incrimination should apply even against people who might have information about future terrorist attacks.</td>
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</table>
The War of 1812 was the United States of America's first declared war, but it was far from being the nation's first foreign conflict. Presidents George Washington, John Adams, Thomas Jefferson, and James Madison all countenanced various adversaries and all took different approaches to exercising the powers vested in the President under the Constitution. Washington, concerned with avoiding foreign entanglements, declared the US would stay neutral when France and England went to war, and set off a firestorm of criticism for doing so. Adams also succeeded in avoiding war after attempting to engage France diplomatically and pursuing domestic policies designed to quiet support for the French. Jefferson, frustrated with his two predecessors for having continued the traditional practice of paying off the Barbary pirates, declared an end to the bribes and sent a naval force to deal with the pirates. Madison sought and received the first-ever congressional declaration of war (against Britain), and also declared victory against the Barbary pirates after a second skirmish in 1815.

Objectives
Students will:
- Identify ways the nation’s first four Presidents exercised their constitutional power as Commander in Chief.
- Evaluate their various approaches to foreign enemies.
- Assess what conditions require declarations of war from Congress.

Critical Engagement Question
How did the country’s first four Presidents exercise their powers as Commander in Chief?

Materials
- Handout A: War in the Early Republic
- Handout B: Name That President

Background/Homework
Have students read Handout A: War in the Early Republic and answer the questions.

Warm-Up [15 minutes]
A. Divide students into groups of four. Within each group, assign one student each to play the role of George Washington, John Adams, Thomas Jefferson, and James Madison.
B. Have students use Handout A as a reference to review the actions they took as President to direct foreign policy/avoid war/wage war. Then have them summarize those actions in two or three sentences on their own paper.
**Activity [25 minutes]**

A. Put up a transparency of **Handout B: Name That President**.

B. Revealing one statement at a time from Section I, have students playing the role of the President described stand up when a statement applies to them. Note: Some statements may apply to more than one President.

C. Clarify any questions students have as the activity progresses.

D. Moving on to Section II of **Handout B**, continue revealing one statement at a time. Have groups discuss the statement among themselves. Then discuss the question of who the statement applies to as a large group.

*Variation: For any/all of the statements, have one group at a time come to the front of the room to debate the question in front of the class and have students vote on the answer. Encourage students to stay “in character” and lobby/persuade the class of their point of view.*

**Wrap-Up [10 minutes]**

Ask students to review what they wrote for their answer to question number three on **Handout A**. Has their thinking on this question changed at all as a result of the day’s activity? Why or why not? Discuss student responses as a large group. In addition, ask the class:

- Has the world ever been completely at peace?
- How many wars are taking place right now?
- Does the Constitution provide sufficient guidance to help Presidents and Congress know when to declare war?

**Homework**

Have students apply what they have learned to the present day and the wars in Iraq and Afghanistan. Has Congress declared war in either of these conflicts? Should it? Have them write a letter to their Senators and Representative in the US Congress expressing their viewpoint.

**Extension**

After two undeclared wars—one in 1801 and one in 1815—the US succeeded in defeating the Barbary pirates. Ironically, it was President James Madison who declared victory against them in his Seventh Message to Congress in 1815. Have students do additional research into the methods used by the first four Presidents of the United States in dealing with the threats posed by the pirates.
The Constitution divides war powers between the President and Congress. Congress has the power to declare war, raise the armed forces, and approve military budgets. The President is Commander in Chief of the military. President James Madison asked for and received a declaration of war against England before the War of 1812. It was the United States’s first declared war, but it was not the first foreign conflict for the young nation.

**George Washington, John Adams and the “Quasi-War” with France**

France declared war on England in 1793. Many wanted the US to take sides, but President George Washington believed it was vital for the US to avoid foreign entanglements. He declared that the United States would stay neutral. This “neutrality proclamation” set off a firestorm of debate. Did the President have the constitutional power to declare neutrality, or was this something only Congress could direct? The debate settled with most taking Washington’s view that it was the executive’s job to direct the nation’s foreign policy, and not lawmakers.

The fighting between France and England raged. John Adams was elected President in 1800. France suspended commerce with the US, and seized hundreds of American ships. Congress appropriated money to increase the navy and authorized raising a provisional army.

In his constitutional role as director of the nation’s foreign affairs, the President is sometimes called the nation’s “Chief Diplomat.” Adams used diplomacy to try to avoid war. In 1797, Adams sent the ambassadors he had appointed to France. France demanded a bribe, so the American diplomats left. The XYZ Affair (as it came to be called as the French diplomats were unnamed) inflamed many Americans’ desire for war. In the end, Adams succeeded in avoiding war with France, but he lost the presidency to Thomas Jefferson in the election of 1800.

**Thomas Jefferson and the Barbary Pirates**

President Jefferson inherited not only tensions with France, but also conflict with the Barbary pirates. For hundreds of years, pirates from the Islamic countries on the coast of North Africa had controlled the Mediterranean Sea. They plundered and looted ships. They captured sailors, holding them for ransom or selling them into the Ottoman (Turkish) slave trade. These pirates considered themselves at war with any nation with which they did not have a “treaty.” In fact, these “treaties” were demands for “tributes” or payments.

The British fleet had defended American ships from the Barbary pirates while it was part of England. Once the US won its independence, however, US ships were on their own. Congress appropriated money for “tributes” as early as 1784, but the attacks continued. By 1794, the pirates were holding dozens of US citizens for ransom. Thomas Jefferson, who was then Washington’s Secretary of State, advised Congress to declare war on the pirates. Congress did not heed his advice. President Washington sent diplomats to negotiate for the prisoners’ release, but with no success.

When John Adams
became President in 1797, he continued paying the pirates. Congress continued to authorize payments. By the turn of the century, Congress was paying twenty percent of the US’s annual budget to the pirates.

Thomas Jefferson took office in 1801. Jefferson, who believed that paying off the pirates only led to more demands, announced that there would be no more tributes paid. Tripoli demanded more money, but Jefferson refused to pay. Tripoli declared war on the US.

Jefferson announced in his First Annual Message to Congress, “Tripoli, the least considerable of the Barbary States, had come forward with demands unfounded either in right or in compact, and had [threatened] war, on our failure to comply before a given day. The style of the demand admitted but one answer. I sent a small squadron of frigates into the Mediterranean....”

Jefferson took this defensive military action as Commander in Chief without seeking a declaration of war from Congress. He believed that a broader response would be needed, and so he asked Congress for a formal resolution. In response, Congress authorized an expanded force. This force succeeded in subduing the pirates, at least temporarily.

**The First Declared War**

President James Madison was elected in 1808. Tensions with England were high, as they had been for the last thirty years. The US objected to impressment (forced recruitment) of American sailors into British ships, as well as British blockades on American trade. Britain was also helping American Indians in the Northwest to challenge US westward expansion.

Madison believed the US had two choices: go to war against a much more powerful navy, or submit and confirm what many in the world believed—that the US was not to be taken seriously as an independent nation.

Madison asked Congress for a declaration of war against England. His message read in part, “Whether the United States shall continue passive under [England’s] ... accumulating wrongs, or, opposing force to force in defense of their national rights, shall commit a just cause into the hands of the Almighty Disposer of Events... is a solemn question which the Constitution wisely confides to the legislative department of the Government....” Congress took Madison’s recommendation and declared war between the US and England. The President of the United States was “authorized to use the whole land and naval force of the United States to carry the same into effect.”

The war was unpopular and, most agree, managed badly by Madison. The hostilities ended in a stalemate in early 1815, but the world could no longer deny that the US was an independent power to be taken seriously. For this reason, some have called the War of 1812 “the second revolutionary war.”

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**Critical Thinking Questions**

1. What foreign conflicts were faced by Presidents Washington, Adams, Jefferson, and Madison?
2. Why did James Madison say that “the Constitution wisely confides to the legislative department of the Government” the power to decide whether to declare war?
3. In your judgment, does every military action require a declaration of war from Congress? If not, how can one determine those actions which require a declaration of war from those that don’t?
NAME THAT PRESIDENT

SECTION I

1. I issued a “neutrality proclamation” declaring the US neutral in the war between England and France.

2. During my term, Congress was paying twenty percent of the US’s annual revenue to the Barbary pirates.

3. I avoided a war with France that seemed inescapable.

4. I relied mainly on diplomacy in dealing with foreign conflicts.

5. I put an end to a traditional practice that had gone on for hundreds of years: paying off the Barbary pirates.

6. I thought it was very important for the US to avoid foreign entanglements.

7. I asked for and received the US’s first declaration of war.

8. I declared victory against a foreign enemy.

SECTION II

1. I did something unconstitutional.

2. I had the hardest job of the first four Presidents.

3. I made the best decisions as Commander In Chief.

4. I made the worst decisions as Commander in Chief.
Overview

Beginning in 1812 and for the next hundred years, US Presidents asked for and received congressional declarations of war against England, Mexico, Spain, Japan, and European powers. During the Cold War, President Harry Truman sent troops to Korea as part of a UN force without a congressional declaration of war. President John F. Kennedy sent troops to defend South Vietnam. Congress never declared war, but years later passed the Tonkin Resolution authorizing President Lyndon Johnson to use force against North Vietnam. In reaction to US involvement in Vietnam, Congress passed the War Powers Act which limited the President’s authority to commit American troops abroad without Congress’s approval. The law was passed over the veto of President Richard Nixon, who argued the law was an abridgement of the President’s authority as Commander in Chief. The Act raises the questions: How far does the President’s power as Commander in Chief extend? And, how much of that power can be limited by Congress?

Objectives

Students will:

- Understand events leading up to passage of the War Powers Resolution.
- Assess the meaning of constitutional provisions about war.
- Evaluate the constitutionality of the War Powers Resolution.

Critical Engagement Question

Did the War Powers Resolution take too much power away from the President, or did it take too much power away from Congress?

Materials

- Handout A: Lyndon Johnson, Richard Nixon, and the War Powers Resolution
- Handout B: War and the Constitutional Convention
- Handout C: The War Powers Resolution
- Handout D: War with Slovenia?
- Handout E: Debate Identity Slips

Background/Homework

Have students read Handout A: Lyndon Johnson, Richard Nixon, and the War Powers Resolution and answer the questions.

Day One Activity I [ 20 minutes ]

A. On the board, write two phrases: “To make war” and “To declare war.”
B. Ask students what the difference is between these two words. Specifically, which is the broader power?
C. Distribute Handout B: War and the Constitutional Convention. Assign roles and read the scene aloud.
D. As large group, trace the arguments and read aloud the final wording of Congress’s power in Article I, Section 8.
E. Debrief students on the scene. As a large group, discuss the following questions.
   - How does the Constitution distribute war powers between the President and Congress?
   - Does “declare war” mean the same thing as “start war”?
   - Why do you think the Founders decided on this arrangement?

**Activity II [30 minutes]**
A. Distribute Handout C: The War Powers Resolution. Give students time to read the excerpts from the law and write down in basic, everyday language what the law says and requires.
B. Using a transparency of Handout C, go over responses.
C. Ask students what they think the delegates at the Constitutional Convention would have thought about this law.

**Day Two**
**Activity [30 minutes]**
A. Distribute Handout D: War with Svovenia? Have students read the scenario and then give them each a slip from Handout E: Debate Identity Slips. Have students assemble into groups made up of Executive Branch, Senate, and House of Representatives. (Students can share roles in large classes.) If possible, have the two legislative chambers near each other with the Executive Branch on a third side of the room.
B. Have the groups discuss the scenario and present some initial opinions on their views. They should also consult Handout C: The War Powers Resolution.
C. Have “the President and his cabinet” address a “joint session of Congress” arguing his or her justification for acting.
D. Legislators will follow up with a debate and then a vote – to declare war, to “authorize the use of force,” or neither.
E. Encourage both the President and Congress to refer to the War Powers Resolution in their remarks.

**Wrap-Up [15 minutes]**
Debrief the class on the activity and conduct a large group discussion to answer the following questions:
   - Contrast the decision-making processes by the President and by members of Congress when it comes to war. What does the President have to consider? What do members of Congress have to consider?
   - Nixon vetoed the War Powers Resolution because he argued it unconstitutionally limited the President's power. What arguments might be made that the War Powers Resolution actually increased the President's power?

**Homework**
Have students read Nixon’s entire veto message. They should summarize and respond to his arguments against the War Powers Resolution. The document can be found at www.ArticleII.org/units/War.

**The Issue Endures**
Debate over the War Powers Act continues today. Critics want the law repealed for apparently contradictory constitutional reasons—some argue it takes too much power away from the President and gives too much to Congress, while others believe the President retains too much power at the expense of Congress. Have students work in groups to research arguments on both sides and answer the following questions:
   - What are the strongest arguments on each side?
   - How do the different arguments against the War Powers Act reveal different ways of interpreting the Constitution?
The Founders wanted to improve on the Articles of Confederation. Under the Articles, the central government had practically no power to wage war. The Confederation Congress could declare war, but had no army or taxing power to fund one. But the Founders also wanted to prevent the central government from having too much power. Their experiences under the British King had proven to them that limits on executive power were essential.

The Constitutional Convention

The men who gathered to write the Constitution agreed that in a republic, the President alone should not be able to start wars. This power would have made the President too much like a King. At first, they gave the power to “make war” to Congress. But after some discussion, they agreed that the legislature was too large and too slow to do this effectively. They changed “make war” to “declare war.” This ensured that the President could not declare war on his own (but left him with the power, as Commander in Chief, to repel attacks without waiting for approval from Congress). In addition to having the power to declare war, Congress was also given the power to approve the military budget.

On the other hand, the President would be Commander in Chief of the military forces. This means that once war is declared, the President is in charge of it. All military officials are ultimately accountable to the President. The delegates at the Constitutional Convention made this decision because an individual is more suited to swift action and decision making than a large body like Congress.

Korea and Vietnam

Congress declared war in the War of 1812, the Mexican-American War, Spanish-American War, World War I, and World War II. In 1947, President Harry Truman announced that the US would provide assistance to any nation in the world that was threatened by Communism. When communist North Korea invaded free South Korea in 1950, Truman sent US troops as part of a combined United Nations force defending South Korea. Truman did not ask for a declaration of war, and described the troops’ mission as a “police action.” The undeclared war ended in an armistice in 1953 with both sides claiming victory.

In 1961, President John F. Kennedy continued the Truman Doctrine of assisting countries threatened by Communism by sending supplies and military advisors to South Vietnam in their fight against Communist North Vietnam. US troops were in combat less than a year later, though there had been no declaration of war from Congress.

President Kennedy was assassinated in 1963 and President Lyndon Johnson took over the management of the war in Vietnam. Congress passed the Gulf of Tonkin Resolution, affirming that the US was “prepared, as the President determines, to take all necessary steps, including the use of armed force” to assist South Vietnam. Though there was no declaration of war, Johnson understood the Gulf on Tonkin Resolution as empowering him to escalate the fighting.

The war became increasingly unpopular at home. Critics argued there was no clear objective, the
US did not seem to be winning, and casualties were mounting. Under a barrage of criticism, President Johnson announced he would not run for a second term.

After President Richard Nixon was inaugurated in 1969, he began secret bombings in Cambodia. These missions were kept secret from Congress and the American people for more than a year. News of the My Lai massacre (where US troops killed unarmed civilians and children) broke in 1969. Distrust of government intensified when the Pentagon Papers (stolen secret documents revealing the government had misled the people about the Vietnam War) were published in 1971.

**The War Powers Resolution**

By 1973, all American troops had left Vietnam, and the Senate Armed Service Committee had begun hearings on the secret bombings in Cambodia. Congress ordered an immediate end to the bombing raids.

At this same time, Congress also drew up the War Powers Resolution. The Resolution required the President to consult Congress before the start of hostilities, and report regularly on the deployment of US troops. Further, the President would have to withdraw forces within sixty days if Congress has not declared war or authorized the use of force. When it came to his desk, Nixon vetoed the War Powers Resolution. In his veto message, he wrote that the Resolution “would attempt to take away, by a mere legislative act, authorities which the President has properly exercised under the Constitution for almost 200 years. ... The only way in which the constitutional powers of a branch of the Government can be altered is by amending the Constitution...” He noted that Congress already had a constitutional check on the President’s power with its appropriations (funding) power.

Congress passed the law over President Nixon’s veto with the necessary two-thirds vote in both Houses.

Though Presidents have provided Congress with reports consistent with the War Powers Resolution since its passage, one former US Senator noted in 2008 that no President had ever submitted the precise kinds of reports to Congress required by the Act despite the US’s involvement in numerous armed conflicts since 1973. A bipartisan panel recommended the repeal of the War Powers Resolution in 2008, but debate over what kind of law should replace it, if any, continues.

**Critical Thinking Questions**

1. How does the Constitution distribute war powers between the President and Congress, and why did the Founders decide on this arrangement?
2. What was the War Powers Resolution of 1973?
3. Why did President Nixon veto it?
4. Keeping in mind the constitutional war powers of Congress and the President, how would you assess the constitutionality of the War Powers Resolution?
5. Why do you think there has been no declared war since World War II, yet the US has been almost constantly engaged in military action? What is the difference between Congress “authorizing the President to use force” and declaring war? Who bears more responsibility in each case? Which, if any, seems to lead to better outcomes for the US?
The following conversation is adapted from quotations from Madison’s Notes of the Convention.

IN CONVENTION
August 17, 1787

“To make war.”

Mr. PINKNEY: I oppose the vesting of the power to make war in the Legislature. Its proceedings are too slow. ... The House of Representatives would be too numerous for such deliberations....

Mr. BUTLER: The objections against the Legislature can also be made against the Senate. I am for vesting the power in the President, who will have all the needed qualities, and will not make war but when the Nation will support it.

Mr. MADISON and Mr. GERRY: We move to insert “declare,” striking out “make” war; leaving to the Executive the power to repel sudden attacks.

Mr. SHERMAN: I think this stands very well. The Executive should be able to repel and not to commence [start] war....

THE US CONSTITUTION

Article I, Section 8 (excerpts)
Congress shall have the power:...To declare war...To raise and support armies...To provide and maintain a navy... To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Article II, Section 1
The executive power shall be vested in a President of the United States of America. ...
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...
**Directions:** Read and discuss the following excerpts from the War Powers Resolution.

<table>
<thead>
<tr>
<th><strong>War Powers Resolution</strong></th>
<th><strong>In Your Own Words</strong></th>
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<tbody>
<tr>
<td>It is the purpose of this [Act] to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities.</td>
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<td>...The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.....</td>
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<tr>
<td>The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities...</td>
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<tr>
<td>War Powers Resolution</td>
<td>In Your Own Words</td>
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<td>In the absence of a declaration of war... the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth— (A) the circumstances necessitating the introduction of United States Armed Forces; (B) the constitutional and legislative authority under which such introduction took place; and (C) the estimated scope and duration of the hostilities or involvement.</td>
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<td>Within sixty calendar days ... the President shall terminate any use of United States Armed Forces ... unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States.</td>
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<tr>
<td>[A]t any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs....</td>
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**War with “Svovenia”?**

* Directions: Read and discuss the following fictional scenario.

The President has just gone on television and announced important information. He has received intelligence that the nation of Svovenia has been building highly dangerous chemical and biological weapons. His cabinet members agree the intelligence is solid and trustworthy. Svovenia, a long-time adversary of the United States, is located near several American allies who feel threatened by these developments. The President has sent several Air Force units to bomb the facilities in Svovenia used to make these weapons and believes that a more sustained ground force will be necessary to ensure the weapons are not completed or used against American or ally targets.
House of Representatives

- You are the Speaker of the House. You don’t think the US should go to war to defend other countries.

- You are a Representative from the same political party as the President. Your district has a large pacifist population. You are up for reelection.

- You are a Representative from the President’s rival political party. You oppose the war, and you hope to make a name for yourself as an anti-war candidate in the next election.

- You are a Representative from the President’s rival political party. You think the President is power-hungry.

- You are a Representative from a region of the country that supports the idea of war with Svovenia.

- You are a Representative from a region of the country where several large defense contractors are based.

- You are a Representative serving on the House Foreign Affairs Committee. You could be persuaded to vote to declare war, but you oppose authorizing the use of force and argue that wars are difficult to get out of once they have begun.

- You are a Representative from a region with a large population of Svovenian-Americans.

Senate

- You are the President pro tempore of the Senate. You think Svovenia is a serious threat to America’s security and support going to war.
### Debate Identity Slips (cont.)

<table>
<thead>
<tr>
<th>Role</th>
<th>Position</th>
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<tbody>
<tr>
<td><strong>Chairman of the Senate Armed Services Committee</strong></td>
<td>You could be persuaded to vote to declare war, but you oppose authorizing the use of force and argue that wars are difficult to get out of once they’re begun.</td>
</tr>
<tr>
<td><strong>Senator from the President’s political party</strong></td>
<td>You think the President is going too far in calling for military action against Svovenia but you don’t want to rock the boat.</td>
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<tr>
<td><strong>Senator from the President’s political party</strong></td>
<td>You support military action against Svovenia, but polls in your state show strong opposition to the President.</td>
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<tr>
<td><strong>Senator</strong></td>
<td>You oppose going to war, but support for it in your state is strong.</td>
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### Executive Branch

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<tr>
<th>Role</th>
<th>Position</th>
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<tbody>
<tr>
<td><strong>President of the United States</strong></td>
<td>You’ve been President for six years and your approval ratings are average. You believe war against Svovenia is necessary, and will also ensure your good legacy.</td>
</tr>
<tr>
<td><strong>Vice President</strong></td>
<td>You support war with Svovenia, especially because you believe your support will help your chances of winning when you run for President next year.</td>
</tr>
<tr>
<td><strong>Secretary of Defense</strong></td>
<td>You first brought the possibility of war against Svovenia to the President’s attention, and you’ve taken some criticism in the media for it.</td>
</tr>
<tr>
<td><strong>Secretary of Homeland Security</strong></td>
<td>You and the Secretary of Defense have been urging the President to go to war against Svovenia.</td>
</tr>
<tr>
<td><strong>Secretary of State</strong></td>
<td>You oppose the war, and you have been urging the President to find a diplomatic solution.</td>
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Overview

After the September 11, 2001 terrorist attacks on the United States, George W. Bush demanded that the Taliban government in Afghanistan turn over Osama bin Laden to the US as well as shut down Al-Qaeda training camps in the country. When the Taliban refused, Bush ordered strikes on the country. After hundreds of enemy combatants were captured on the battlefield in Afghanistan, in the US, and around the world, the question of how detainees in the War on Terror should be treated became problematic. Were accused terrorists criminals, or were they illegal combatants (aggressors guilty of breaking laws of war)? Bush’s answer to that question—that they were illegal combatants not entitled to due process protections of US law, but subject to Military Tribunals—became harder and harder to justify to the American people as time wore on.

Objectives

Students will:
- Analyze constitutional arguments on the nature of terrorist acts.
- Evaluate whether accused foreign terrorists should be afforded all constitutional due process protections.

Critical Engagement Question

Should accused foreign terrorists be afforded all constitutional due process protections?

Materials

- Handout A: George W. Bush and the War on Terror
- Handout B: September Eleventh True or False
- Handout C: Data Points

Background/Homework

Have students read Handout A: George W. Bush and the War on Terror and answer the questions.

Warm-up [10 minutes]

Put up an overhead of Handout B: September Eleventh True or False. Revealing one statement at a time, ask the class to respond to each statement. Then reveal and discuss each answer.
Activity [30 minutes]

A. On the board, write the question: Are acts of terror acts of war, or are they criminal acts?

B. Distribute Handout C: Data Points. Have students discuss the chart in pairs.

C. After ten or fifteen minutes, reconvene the class and ask students to share their responses.

Wrap-Up [10 minutes]

As a large group, discuss the questions:

- In 2001, to what degree was Bush’s response consistent with historical precedent?
- The President has the constitutional duty to enforce the law, as well as the constitutional role of Commander in Chief of the military. How should the President understand these roles with respect to terrorism?
- How should the President respond when an attack is by an “unconventional enemy,” i.e. one not officially associated with a foreign state?
- What arguments did Bush offer to justify his argument that accused foreign terrorists should not be afforded all constitutional due process protections?
- What arguments could be made that they should be afforded all those protections?

Homework

Have students make an illustrated timeline of major national events, federal legislation, and Supreme Court cases about the War on Terror since September 11, 2001. They should use Handout A as well as their textbooks or other resources. Each event should be accompanied by two or three sentences explaining its significance.

Extensions

Have students do additional research to compare and contrast the legal treatment of admitted and/or accused terrorists under the Bush Administration and the Obama Administration.
On September 11, 2001, radical Islamic terrorists hijacked and crashed four passenger jets in New York, Washington, DC, and Pennsylvania. The hijackers crashed two jets into the World Trade Center, bringing down the twin towers. The death toll was 2,605. One plane was crashed into the Pentagon, damaging the building and killing 125 people. The fourth jet was crashed into a field in Pennsylvania as forty passengers and crew fought back against the terrorists. There were no survivors.

Responders on that day included police, firefighters, and service people from all branches of the US military. More than 400 emergency workers died in their heroic attempts to help. In all, 2,976 people, mostly civilians, from more than ninety countries, lost their lives on that day. Millions more lost their sense of security.

**Bush Address the Nation**

In the days following the attacks, US and British intelligence confirmed that Al-Qaeda, led by Osama bin Laden, had planned and carried out the attacks. On September 20, President George W. Bush addressed Americans—many of whom had never heard of Al-Qaeda—in a televised speech before a joint session of Congress.

Bush contrasted the September 11 attacks on civilian targets with December 7, 1941 when the Japanese bombed the naval base at Pearl Harbor.

He told the American people about Al-Qaeda. He explained that its members practiced “a fringe form of Islamic extremism,” and that their “directive commands them to kill Christians and Jews, to kill all Americans and make no distinctions among military and civilians, including women and children.” He explained that while the group was linked to more than sixty countries, its base was Afghanistan. He condemned the Taliban regime which controlled Afghanistan, and announced the beginning of a War on Terror. “Our war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.”

The President continued, “I have a message for our military: Be ready. I have called the armed forces to alert, and there is a reason.”

Bush identified Osama Bin Laden as the “prime suspect” in the attacks. The US demanded that the Taliban deliver Bin Laden and other Al Qaeda leaders to the US, and shut down the numerous Al Qaeda training camps in the country. The Taliban refused. The US began bombing Afghanistan on October 7, 2001.

Two months later, in November of 2001, President Bush approved the use of Military Tribunals to try accused terrorists, including many individuals captured in Afghanistan. Bush said that the Tribunals were needed to “to protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks.” A detention camp was set up at the US Naval base in Guantanamo Bay, Cuba.

**Military Tribunals**

Military Tribunals are court proceedings used to try the enemy for violations of the laws of war. Military Tribunals differ from criminal trials in the civilian justice system in.
some important ways. Military Tribunals are not required to preserve many of the rights protected in the Bill of Rights. For example, the Sixth Amendment requires criminal trials to be open to the public, but Military Tribunals can be conducted in secret. Strict rules of evidence in the civilian justice system may not apply in a Military Tribunal. Decisions of Military Tribunals cannot be appealed in federal court. Rather, the President, as Commander in Chief, makes the final decision in reviewed cases.

The first Military Tribunals in the US were held during the Revolutionary War, and have been a part of every war in US history through World War II. During World War II, the Supreme Court unanimously upheld their use for unlawful combatants, even when the accused were US citizens. (At the time Bush was President, no President had ever asserted that the US should extend Bill of Rights protections to foreigners accused of making war against the US.)

A little over a month after the first prisoners arrived at Guantanamo Bay, the first habeas corpus petition (a petition challenging detention) was filed. That case was dismissed. More petitions followed and were also dismissed.

The Years that Followed

Public unease with the indefinite detention of suspected terrorists at Guantanamo Bay grew. Bush led the US invasion of Iraq in March of 2003 on the suspicion that Saddam Hussein had weapons of mass destruction. Revelations that no such weapons were found and that Iraqi prisoners had been abused at Abu-Ghraib prison led to lower public approval of the War on Terror. The US Supreme Court stopped dismissing habeas corpus petitions and progressively expanded the rights afforded to detainees at the camp.

In 2004, the Supreme Court held in Hamdi v. Rumseld that habeas corpus did not depend on citizenship status. The President responded by convincing the Republican-led Congress to pass the Military Commissions Act of 2006, which addressed wartime conditions when habeas corpus did not apply to foreign enemy combatants.

In 2006, the Supreme Court held that detainees had the right to appeal their detentions in federal court case of Hamdan v. Rumseld.

The Supreme Court continued to chip away at the President and Congress’s power to establish the Military Tribunals in Boumediene v. Bush (2008). The Court found the Military Commissions Act of 2006 to be an unconstitutional suspension of habeas corpus. Enemy combatant detainees at Guantanamo Bay were entitled to the Fifth Amendment’s protection of due process.

In November of 2008, Barack Obama was elected President. One of his campaign pledges was to close the detention center at Guantanamo Bay by January 2010.

US troops remain in Afghanistan and Iraq, working to prevent the strengthening of Al-Qaeda.

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**Critical Thinking Questions**

1. What ultimatum did President Bush give to the Taliban on September 20, 2001?
2. What are two differences between criminal trials and Military Tribunals?
3. How did the Supreme Court initially respond to habeas corpus petitions from detainees at Guantanamo Bay? How did the Court respond in 2004, 2006, and 2007?
4. Should admitted and/or accused foreign terrorists be afforded all constitutional due process protections? Explain your answer.
September Eleventh True or False

1. President George W. Bush was the first President to order strikes on Islamic terrorists.

False: Thomas Jefferson was the first.

2. Since most of the September 11 hijackers were from Saudi Arabia, Bush ordered military strikes against that country.

False: He ordered a strike against Afghanistan, where the Taliban government was harboring Osama bin Laden, the leader of the hijackers.

3. The overwhelming majority of victims on September 11, 2001 were civilians.

True

4. President Bush’s approval rating was over 90% when Congress enacted the USA-PATRIOT Act (an act strengthening law enforcement power to find and capture terrorists.)

True

5. The US declared war on Afghanistan when the Taliban government refused to hand over Osama bin Laden.

False: Congress never declared war. (And only Congress has the power to do so.)

6. In December of 2001, a CBS poll showed that a large majority of Americans supported giving President Bush “special war powers”.

True
**Directions:** Read the information in the middle of the chart. If the information could be used to support the argument that terrorist acts are acts of war, place a check on the left side of the chart. If the information supports the argument that terrorist acts are criminal acts, place a check on the right side of the chart. If the information supports neither, leave the row blank.

<table>
<thead>
<tr>
<th><strong>Act of War</strong></th>
<th><strong>Criminal Act</strong></th>
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<tr>
<td>Military tribunals for enemy combatants with limited due process protections</td>
<td>All constitutional due process protections for accused persons</td>
</tr>
</tbody>
</table>

1. “Enemy combatants who without uniform come secretly through the lines for the purpose of waging war by destruction of life or property, are ... generally deemed ... to be offenders against the law of war subject to trial and punishment by Military Tribunals.” *Ex Parte Quirin* (1942)

2. Some terrorists are supported by governments who openly call for the destruction of other countries.

3. Congress never declared war against Afghanistan; it did, however, authorize the President to use military force against “those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons.”

4. When the hijackers boarded their four flights on September 11, 2001, they were not wearing Al-Qaeda uniforms or any military uniform; they were dressed like ordinary civilians.
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5. Evidence presented at criminal trials will be made public in the US and international press.

6. The North Atlantic Treaty Organization (NATO) invoked its charter for the first time in its history in response to the attacks: The September eleventh attacks were an attack on all the NATO allies.

7. Some, but not all, detainees at Guantanamo Bay are accused of (or admit to) planning the September 11 attacks. Others as suspected of planning or aiding in other terrorist acts.

8. Constitutional protections against self-incrimination should apply even against people who might have information about future terrorist attacks.
THE PRESIDENT AS ENFORCER OF THE LAW

ACTIVITY [30 minutes]

A. Distribute Constitutional Connection: The President as Enforcer of the Law 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. Student should brief each other on the contents of their section.

C. Reconvene the class and use an overhead to guide discussion and fill in the chart. See the Answer Key for suggested responses.

D. Conduct a large group discussion to answer the questions:
   - Why do you think the Founders gave the power of enforcing the law to a separate branch of government than the branch that makes laws, or the branch that interprets them?
   - Does the President’s power as Commander in Chief empower him to use military force against American citizens? If so, under what circumstances?
   - Does the President have a responsibility to enforce all laws passed by Congress? How do you know?
   - How far can the President go in “taking care that the laws are faithfully executed”? How far should he go?
# The President as Enforcer of the Law

*Directions:* Read carefully the sections of the Constitution below. Define each phrase and explain how it defines the President’s power to enforce the law.

<table>
<thead>
<tr>
<th>Constitution Citation</th>
<th>Put this in your own words</th>
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<tbody>
<tr>
<td>1. Article I, Section 7</td>
<td>If he approve he shall sign [a bill], but if not he shall return it....</td>
</tr>
<tr>
<td>2. Article II, Section 1</td>
<td>The executive power shall be vested in a President of the United States of America....</td>
</tr>
<tr>
<td>3. Article II, Section 1</td>
<td>He shall take the following oath or affirmation:—“I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.”</td>
</tr>
<tr>
<td>4. Article II, Section 2</td>
<td>The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States....</td>
</tr>
<tr>
<td>5. Article II, Section 3</td>
<td>He shall take care that the laws be faithfully executed....</td>
</tr>
<tr>
<td>6. Article IV, Section 4</td>
<td>The United States ... shall protect each of [the states] against invasion; and on application of the legislature, or of the executive ... against domestic violence.</td>
</tr>
<tr>
<td>7. Article VI, Section 2</td>
<td>This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.</td>
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</table>
Among the deficiencies of the Articles of Confederation singled out for attention by delegates like James Madison at the Constitutional Convention was the absence of an independent “National Executive” empowered to “execute the National laws” (Resolution 7 of the Virginia Plan). The fact that the President is commonly referred to as the Chief Executive is striking evidence of the significance attached to the law enforcement or ‘execution’ responsibilities of the President. The clarity that marks the designation of the president as Chief Executive, however, is in stark contrast to the ambiguity regarding both the scope of the President’s duties as Chief Executive and the powers that he may employ to carry out those duties.

Article II of the Constitution provides few details when it comes to the President’s responsibilities and powers as Chief Executive. While the first words of Article I declare that Congress’ powers are limited to those “herein granted,” most of which are then set out in Section 8, Article II begins with the sweeping declaration that “the executive power shall be vested in a President of the United States.” Sections 2 and 3 of Article II identify various powers and duties entrusted to the President, but mostly in very general terms (e.g., “The President shall be Commander in Chief of the Army and Navy”).

Considering that abuses of executive power constituted the bulk of the evidence used to justify the Declaration of Independence, it would be reasonable to expect the Constitution to contain a highly detailed description of the responsibilities and powers entrusted to the President, along with specific restrictions on the exercise of those powers. In the case of the legislative department, for example, the Framers not only laid out specific powers in Section 8 (Article I), but took care to identify specific limitations on the use of legislative powers in Section 9 (e.g., “No bill of attainder or ex post facto law shall be passed;” “No Tax for Duty shall be laid on Articles exported from any State”).

Many scholars have argued that the general expectation that Washington would be the first President accounts for the absence of greater specificity in Article II. According to this theory, the delegates were prepared to trust Washington to give proper definition to the presidency. To say that Washington was a self-conscious President is an understatement. He understood the full significance of the precedents that he would establish for the nation and for all the Chief Executives who would follow him. He appointed accomplished public figures to Cabinet posts (e.g., Thomas Jefferson and Alexander Hamilton) and invited a full
hearing on matters of national interest, such as the establishment of a Bank of the United States, before finally endorsing any proposal. Although unsuccessful in his attempt to secure an advisory opinion from the Supreme Court on the Franco-American Treaty of 1778, the fact that he solicited the advice of judicial officials is evidence of the significance he attached both to the effective administration of the nation’s affairs and to being above reproach when it came to the exercise of his powers. The care with which he approached his duties also is reflected in his use of the veto power. Always cautious about appearing to be ruling on the basis of his own “will,” Washington employed the veto power only twice and reserved its use for occasions when he believed Congress has transcended the limits of the Constitution.

Washington never underestimated the difficulties involved in establishing and preserving a respectable rights-oriented republic. He feared anarchy as much as he loathed governmental tyranny. He freely used his powers to help shape a healthy social culture for the new country. His Farewell Address was an exercise in civic education. The same concern for instilling and reinforcing good habits or “virtues” on the part of the people can be seen in his forceful response to the so-called “Whiskey Rebellion.” While Washington’s decision to lead federalized militia troops to enforce compliance with an excise tax on whiskey clearly fell under his duties as Chief Executive, it is hard not to conclude that his stern response was designed not only to restore order, but to remind all Americans of the importance of law abidingness. For Washington, the role of the Chief Executive included both the execution of federal laws and the cultivation of respect for the legal system.

America’s evolution into a more thoroughly democratic nation was accompanied by changes in institutions such as the presidency as well as the party system. While Washington traced his powers to the Constitution, many later Presidents pointed to their election by the people as the most important source of their power. The first President to do this in a dramatic way was Andrew Jackson. Embittered by Congress’s decision to overlook him in favor of John Quincy Adams in the contested election of 1824 that ended up in the House of Representatives, Jackson stressed his identification with ordinary Americans rather than the “gentry” class in the elections of 1828 and 1832.

In contrast to prior Presidents, Jackson advertised himself as the champion of the interests of “the many” against institutions and policies that protected “privileged” interests. The most prominent target of this reformist strategy was the Bank of the United States. Portraying the Bank as a corrupt institution that favored the moneyed class, Jackson vetoed legislation that would have extended the Bank’s charter and then moved its funds to state institutions. This action elicited a censure resolution in the Senate, which in turn prompted a “protest message” in which Jackson reminded Congress that the President, as the “direct representative of the people,” was not obligated to defer to another department’s interpretation of the Constitution.

Jackson subscribed to a broad construction of presidential authority at the same time that he sought to restrain the expansion of federal power. He used the veto power more often, and exercised more control over subordinate administrative officials, than any of his predecessors. He used the authority of his office to effectuate the removal of Native Americans
to territories west of the Mississippi River. Although always attentive to the impact of the federal government’s actions on the states, Jackson did not favor nullification or secessionism. When South Carolina declared a national tariff void, Jackson denied that states had such power and threatened to send troops to enforce the national law.

If Jackson combined his popularity and powers to advance his reformist agenda, it is possible to point to popular Presidents who have been content to be preservationists. Dwight D. Eisenhower, a well-respected World War II Army general, exercised such restraint as Chief Executive that some historians have viewed him as a “do-nothing” President. His restraint reflected a political philosophy that valued individual freedom, minimal government control of the economy, and a national government of limited aims. His first message to Congress included a recommendation that $5 billion be cut from the budget submitted by the departing Truman Administration. His reservations about extensive national involvement in housing, education, and agriculture also extended to civil rights. He repeatedly declared his desire to avoid using federal troops to enforce the Supreme Court’s decision in *Brown v. Board of Education* (1954). Eisenhower valued “partnership” and collaboration both with members of Congress and with state officials.

If Eisenhower did not seek to extend the powers of the national government or the presidency, he also did not avoid using those powers when necessary to protect national interests. He supported the St. Lawrence Seaway project that linked the Atlantic Ocean with the Great Lakes and proposed substantial improvements in the national highway system. While he believed the states were responsible for managing the everyday affairs of the people, he would not tolerate civil unrest or disrespect for the Constitution and decisions of the courts. Citing his constitutional duty, he sent federal troops to Little Rock, Arkansas to enforce school desegregation. Once the initial debate over the *Brown* decision settled down, he proposed a federal civil rights bill in 1956 that focused on voting rights, and called for the creation of a civil rights commission and a Civil Rights Division in the Justice Department. Eisenhower’s vision was of an orderly and respectful America, where all persons were treated as equals and given an opportunity to control their own destiny.

By contrast with Eisenhower, President John Kennedy subscribed to a progressive political philosophy when it came to government involvement in areas such as education, housing, and the economy. Also in contrast to Eisenhower, Kennedy boldly announced in his Inaugural Address that his presidency marked a new era in American history (“the torch has been passed to a new generation of Americans”). An ambitious legislative program matched the high-toned rhetoric of his inaugural address and speeches to the American people in 1961 and 1962. A coalition of Southern Democrats and Republicans, however, kept his legislative successes to a minimum. He succeeded in setting ambitious goals for
the space program and securing passage of important housing and employment bills, but his education and medicare legislation stalled and he was hesitant to propose new civil rights initiatives. Kennedy was not averse, however, to using executive orders to secure important domestic objectives and he gave Robert Kennedy, the Attorney General, the go-ahead to use the powers of the Justice Department to challenge segregationist practices. The man-on-the-moon program, the Peace Corps, and the far-reaching civil rights and Medicare/Medicaid legislation that followed his assassination, were symbolic of the new social order that he envisioned at the time of his inauguration.

The Chief Executive role has undergone a dramatic transformation since Washington’s presidency. The democratization of the election process has encouraged Presidents to appeal to their popular mandate, and not merely to the words of the Constitution, when justifying personal agendas. At the same time, the American people expect more from the national government today than at the time of the Founding. These expectations have inflated not only the responsibilities, but also the powers of America’s Chief Executives. One thing, however, has not changed: the strength and respectability of James Madison’s constitutional system continue to depend on the exercise of good judgment and self-restraint by all public officials, including Presidents.

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

George Washington, always aware that as the new nation’s first President, his every action would be “drawn into precedent,” conducted himself both deliberately and decisively when farmers across the US resisted a new federal excise tax on liquor. He publicly involved other branches and levels of government in his decision process, and issued proclamations calling for peaceful resolutions before using military force to quash what has come to be known as the Whiskey Rebellion. His political opponents charged Washington and his political party with exaggerating (if not manufacturing) the crisis, and called his decision to lead several thousand militia troops against the farmers heavy-handed. However one judges Washington’s action, the events became the first public test of the President’s power to enforce federal law in the new commercial republic.

Objectives

Students will:
- Understand the historical events leading up to the Whiskey Rebellion.
- Analyze the Whiskey Rebellion from multiple perspectives.
- Evaluate Washington’s decision to use military force against rebelling farmers in 1794.
- Assess criticism of Washington’s handling of the Whiskey Rebellion.

Critical Engagement Question

Assess President George Washington’s decision to use military force to subdue the Whiskey Rebellion.

Materials

- Handout A: George Washington and the Whiskey Rebellion
- Handout B: Setting the Scene
- Handout C: Press Conference

Background/Homework

Have students read Handout A: George Washington and the Whiskey Rebellion and answer the questions.

Warm-Up [10 minutes]

A. Using an overhead of Handout B: Setting the Scene, lead the class to make a timeline of the major events leading up to the Whiskey Rebellion from 1790 to 1794. (Students can use Handout A and their textbooks for information.)
B. Ask students to summarize the events leading up to the Whiskey Rebellion in Pennsylvania, and the types of steps Washington took in addressing the situation.

ACTIVITY [30 minutes]

A. Let students know they will be preparing for a press conference on the events of the Whiskey Rebellion. Distribute Handout C: Press Conference. Students should circle their identity for the day’s activity and prepare to either ask or be asked questions.

B. Assign each student the role of George Washington, Alexander Hamilton, Western Pennsylvania Farmer, Tax Collector, James Wilson, Thomas Jefferson, Democratic Society Member, or Reporter.

C. Have all the Washingtons, all the Hamiltons, etc. meet in small groups together for a few minutes to discuss what they will say/ask at the press conference and complete Handout C.

D. After a few moments, have students jigsaw into new groups of seven with one Washington, one Hamilton, etc. Staying “in character,” students should ask and answer questions of each other. (All characters, not just Reporters, should ask questions at this point.)

E. While students are working, arrange six desks with name tags at the front of the room. Ask for volunteers to assemble a panel of the six historical figures while the rest of the class plays Reporters.

F. As time allows, conduct a “press conference,” encouraging Reporters to ask questions of all the historical figures.

WRAP-UP [10 minutes]

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

- Was Washington’s response appropriate to the situation?
  Or was it excessive?
- Were his actions constitutional?
- Why do you think Washington consulted with other branches and levels of government in making the decision to use military force to subdue the Whiskey Rebellion?

HOMEWORK

Students should write a newspaper editorial about the events of the Whiskey Rebellion. The editorial should communicate the author’s opinion on the prudence and constitutionality of Washington’s response.

EXTENSION

Have students read Washington’s Sixth Annual Message to Congress.

- In what ways does he refer to the Constitution?
- How does he explain his actions?
- How would students assess his explanation?

The document can be found at www.ArticleII.org/units/enforce.
Many of the Founders, including George Washington, believed that one weakness of the Articles of Confederation was that the federal government could not deal firmly with domestic uprisings such as Shays’s Rebellion. The Constitution, ratified in 1789, created a strong central government. To support federal power to enforce the law, Congress passed the Militia Law of 1792. This law allowed Congress to raise a militia to “execute the laws of the union, (and) suppress insurrections.”

**The Excise Tax**

The national government had assumed state debts from the Revolutionary War. It was cash-strapped. Secretary of the Treasury Alexander Hamilton called for a 25 percent excise (sales) tax on liquor. The proposal was opposed by some in Congress who feared it would be oppressive. One Senator warned that the people would resist the tax: “War and bloodshed are the most likely consequence of all this.” Congress passed the tax in 1791.

Anger about the tax was widespread along the frontier from Pennsylvania to Georgia. Smaller distillers and farmers especially hated the tax, as it favored larger liquor producers with a “flat rate” that allowed them to pay less. Cash-poor farmers (who grew the grains used to make whiskey) were hit very hard when distilleries bought less of their crops.

**The Rebellion**

Many Americans along the frontier resented the tax from a distant legislature that they did not believe represented them well: Congress had failed to secure them from Indian attacks or put their interests first in other ways. To them, this new excise was like the unfair taxes imposed by the British just two decades before.

Those opposed to the tax met in “democratic societies” and “assemblies,” passing resolutions against the tax and petitioning for its repeal. They were unsuccessful. There were occasional outbreaks of opposition in rural areas. In rural areas where no one was willing to serve as tax collector, the taxes went unpaid.

**Washington’s Response**

In September of 1792 President Washington issued a proclamation calling for an end to activities designed “to obstruct the operation of the laws of the United States for raising a revenue upon spirits....”

By July of 1794, the tension had reached a breaking point. Tax collectors were harassed, tarred and feathered; one’s home was burned. In Western Pennsylvania, the rebellion was intense. Reports told that six thousand people were camped outside Pittsburgh threatening to march on the town.

Washington believed he had to act. He and his cabinet members met with Pennsylvania officials on August 2, 1794. They decided to present evidence of the violent resistance to Associate Justice of the Supreme Court James Wilson. In his notes of the meeting, one cabinet member explained, “This step was urged by the necessity of understanding without delay all the means, vested in the President for suppressing the progress of the mischief.” After reviewing the evidence, Justice Wilson certified that the situation could not be controlled by only the civil
The rebellion continued, so Washington ordered the militia to assemble against the insurgents. On September 25, 1794, he issued another Proclamation which read in part, “... I, George Washington, President of the United States, in obedience to that high and irresistible duty consigned to me by the Constitution ‘to take care that the laws be faithfully executed,’ ... do hereby declare and make known that... a militia...force which...is adequate to the exigency is already in motion...”

Washington had recruited men from Pennsylvania, Maryland, and New Jersey. In total, there were almost 13,000 men—about as many as had served in the entire Continental Army that defeated the British. Washington led the troops into Bedford—the first and only time a sitting US President has led troops into the field.

The Aftermath

By the end of November, more than 150 people had been arrested; most were later freed due to lack of evidence. Two were convicted of treason, but Washington later pardoned those two. Washington's strong response to the Whiskey Rebellion became, as future-President James Madison put it, “a lesson to every part of the Union against disobedience to the laws.”

Madison did not approve, however, when Washington condemned the “combinations” and “self-created societies” that petitioned Congress and organized resistance to the tax in his Sixth Annual Message to Congress later that fall. He believed the President had gone too far by condemning what Madison believed were activities protected by the First Amendment.

Public hostility to the excise tax, as well as negative reaction to Washington's actions, were partly responsible for growing opposition to the Federalist Party. Thomas Jefferson, who had resigned as Washington’s Secretary of State amid growing conflict with Hamilton, hinted that the crisis was exaggerated and the show of force was a political move. “An insurrection was announced and proclaimed and armed against, but could never be found,” Jefferson said. When the Federalists in Congress and the White House were turned out of office in 1800 and Jefferson was elected President, the excise tax was repealed.

Critical Thinking Questions

1. What federal law was the focus of protests in the Whiskey Rebellion?
2. Why did President Washington consider using military force against the protestors?
3. How did Washington involve other branches and levels of government in his decision?
4. Why did Washington blame “democratic societies” for the crisis? Did he go too far?
5. The Constitution assigns the President the responsibility to “take care” that laws are “faithfully executed” and makes him or her commander in chief of the military. How did Washington understand these duties?
1. **1789**: The ______________________ is ratified. It gives power to raise an army to Congress, and assigns the power of Commander in Chief to the President. The President is also charged with taking care that the laws are “faithfully executed.”

2. **1791**: Congress passes a ____% excise tax on ___________.

3. **1792**: Congress passes the _________________ of 1792. This law empowers Congress to raise a militia to “____________________________________________.”

4. **1792**: In response to outbreaks of resistance to the tax, President Washington issues a ________________ calling for _______________________.

5. **July 1794**: Events in Pennsylvania include: __________________________

6. **August 2, 1794**: President Washington meets with ________________ to discuss what action to take, if any, with respect to the situation in Pennsylvania. He presents evidence to ________________ who will decide if the situation can be handled by civil authorities.

7. **August 7, 1794**: Washington issues a proclamation declaring __________________________

8. **September 25, 1794**: Washington issues a proclamation declaring __________________________
Press Conference

My role at the Press Conference:
(Circle One)

George Washington
Alexander Hamilton
Western Pennsylvania Farmer
Tax Collector
James Wilson
Thomas Jefferson
“Democratic Society” member
Reporter

If you are playing the role of a historical figure, use Handout B and your textbook to summarize your role/contributions/thoughts about the following. Be prepared for some hard-hitting questions!

- the Excise Tax
- “democratic societies”
- the Whiskey Rebellion
- Washington’s response

If you are playing the role of a reporter, use Handout B and your textbook to compose one hard-hitting question for each of the historical figures who will be at the “press conference.” Questions should pertain to any or all of the following:

- the Excise Tax
- “democratic societies”
- the Whiskey Rebellion
- Washington’s response
Overview

Andrew Jackson pursued a policy of removing Native Americans from lands in the east to new territories west of the Mississippi. Removal was popular, as it would result in the opening of hundreds of thousands of acres to white settlement and gold mining. Jackson signed the Indian Removal Act, a federal law that empowered the President to negotiate treaties with Indian tribes with the goal of moving them west. Legislation designed to force Native Americans out was also passed at the state level. When Georgia ignored an 1831 Supreme Court ruling that state laws had no force against Indian tribes, Jackson turned a blind eye. Neither Jackson nor the US Senate listened when the Cherokee objected that the Treaty of New Echota was fraudulent. Jackson’s decisions regarding the enforcement of removal laws against Native Americans set the stage for the Trail of Tears, one of the most dishonorable events in American history.

Objectives

Students will:
- Understand some of the major events leading up to the Trail of Tears.
- Analyze American civic values and constitutional principles and their application to events during the Andrew Jackson administration.
- Assess the claim that the forced removal of American Indians from their native lands is one of the most dishonorable periods in American history.

Critical Engagement Question

Did a series of President Andrew Jackson’s decisions regarding Indian Removal conflict with America’s constitutional principles and civic values? If so, how?

Materials

- Handout A: Andrew Jackson and Indian Removal
- Handout B: America’s Constitutional Principles and Civic Values
- Handout C: Discussion Questions

Background/Homework

Have students read Handout A: Andrew Jackson and Indian Removal and answer the questions.

Warm-Up [15 minutes]

Ask students to brainstorm important American principles and values, and agree upon a short, simple definition for each. In addition to the ideas students generate, you may offer:
Honor: *keeping one’s word*

Respect: *esteem for others*

Majority rule versus minority rights: *natural rights are not subject to majority vote*

Property rights: *being able to keep one’s possessions and the fruits of one’s labor*

Popular sovereignty: *government and laws based on the consent of the governed*

Representation: *laws are only legitimate if the people they affect have a say in them*

Responsibility: *taking care of oneself, one’s family, and one’s community*

Equal treatment under law: *no one is above the law*

Separation of powers: *powers are divided among branches of government*

**Activity [20 minutes]**

A. Write the following quotation from the petition of the ladies of Steubenville, Ohio, on the board. “To you [Congress], then, as the constitutional protectors of the Indians within our territory, and as the peculiar guardians of our national character, .... we solemnly and earnestly appeal to save this remnant of a much injured people ... and to shelter the American character from lasting dishonor.”

B. Ask students: Why were the petitioners concerned about “lasting dishonor” to the American character?

C. Have students work in pairs to complete Handout B: America’s Constitutional Principles and Civic Values.

D. Reconvene the class and fill in the chart using an overhead of Handout B.

**Wrap-Up [15 minutes]**

Distribute Handout C: Discussion Questions. As a large group, discuss the questions on the Handout.

**Homework**

Have students use one of the discussion questions from the lesson as a prompt and write a one-page response paper.

**Extensions**

A. Have students read an excerpt from Jackson’s Second Message to Congress and write a one page response that might have been given by a member of Congress. The document can be found at www.ArticleII.org/units/enforce.

B. Have students write a one-page position paper arguing whether or not Indian Removal could have taken place after:
   - The passage of the Fourteenth Amendment?
   - The bombing of Pearl Harbor?
   - The passage of the Civil Rights Act of 1964?
Andrew Jackson and Indian Removal

Before he became President, Andrew Jackson had been involved in the removal of American Indians from various states in the US. In the 1810s, Jackson led military forces that removed Creek and Seminole tribes from lands in Alabama, Georgia, and Florida.

In his First Message to Congress in 1829, Jackson proposed (as his predecessor President James Monroe had done) that Indians be moved to areas west of the Mississippi. “This emigration should be voluntary,” he said, “for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers and seek a home in a distant land.” Ultimately, Jackson hoped, the Indians who remained in the East would assimilate. “Submitting to the laws of the States, and receiving, like other citizens, protection in their persons and property, they will ere long become merged in the mass of our population.”

The Indian Removal Act

Jackson pushed the Indian Removal Act through Congress, and signed it into law once both Houses approved it in 1830. This law authorized the President to negotiate treaties with Indian tribes, and to buy their land east of the Mississippi River in exchange for western lands outside of US territory. In his Second Message to Congress, Jackson explained what he believed would be the benefits of “speedy removal”: States would be able to advance “in population, wealth, and power,” and the Indian tribes would be freed from state power and able to “pursue happiness in their own way …. perhaps … becom[ing] an interesting, civilized, and Christian community.”

Indian Removal was popular among white Americans. It was particularly popular in the South, where individuals stood most to gain from the opening up of Indian lands to white settlement and gold mining.

But many Americans, including Tennessee Congressman Davy Crockett, opposed removing the Indians from their lands. One 1830 petition from the Ladies of Steubenville, Ohio appealed to, “the undoubted natural right which the Indians have, to the land of their forfathers…” [emphasis original]. The petition concluded, “To you [Congress], then, as the constitutional protectors of the Indians within our territory, and as the peculiar guardians of our national character, … we solemnly and earnestly appeal to save this remnant of a much injured people … and to shelter the American character from lasting dishonor.”

The Supreme Court

Congress did not heed the petitions and legal steps towards removal continued. The state of Georgia passed a series of laws designed to persuade the Cherokee to give up their lands and leave. Some of these re-drew the boundaries of Cherokee lands; banned whites from entering their lands without a permit; and forbade the Cherokee from digging for gold.

Seven white missionaries living on Cherokee land appealed their case to the Supreme Court. In *Worcester v. Georgia* (1831), the Court declared that Georgia could not regulate activity on the Cherokee lands. Chief Justice John Marshall wrote, “The Cherokee nation, then, is a distinct community occupying its own territory...
in which the laws of Georgia can have no force. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the government of the United States.”

The state of Georgia ignored the decision and continued regulatory activity on Cherokee lands. When he heard of the ruling, Jackson is reported to have said, “John Marshall has made his decision, now let him enforce it!” He took no action against Georgia to enforce the ruling. Though the stage was set for a possible confrontation between Georgia and the federal government, or one between the national judiciary and executive branches, no such confrontation took place.

In another Supreme Court case, *Cherokee Nation v. Georgia* (1831), the Court expressly denied that the Cherokee were a “foreign nation” as referred to in the Constitution. “They may more correctly, perhaps, be denominated domestic dependent nations... Their relations to the United States resemble that of a ward to his guardian. They look to our Government for protection, rely upon its kindness and its power, appeal to it for relief to their wants, and address the President as their Great Father.” Therefore, the ruling held, they had no right to sue in federal court to prevent their removal from tribal lands.

At the time, most Americans did not believe that the US would ever extend beyond the Mississippi. Many truly believed that American Indians would benefit from self-government away from American settlers. Although there was some protest of Indian Removal, especially in the North, Jackson’s policies were popular. He was overwhelmingly reelected in 1832.

**Treaty of New Echota**

In 1835, the US government negotiated a treaty with representatives of the Cherokee in Georgia. The representatives were there against the wishes of the majority of the Cherokee people, as well as their leader, Chief John Ross. The Treaty of New Echota exchanged the Cherokee lands in the east for five million dollars and lands west of the Mississippi.

Chief Ross argued that the Treaty was a fraud and urged the US Senate not to ratify the treaty. However, it was approved and President Jackson signed it into law.

The Treaty provided a two-year period for Cherokee families to leave voluntarily, and gave them money for the journey. In the summer of 1838 the deadline passed. Jackson’s successor, President Martin Van Buren, ordered the US Army to proceed with forced removal. During the winter of 1838-1839, 14,000 Cherokee men, women, and children were forced to march from their homes to lands in present-day Oklahoma. Four thousand people died. Historians have called the Trail of Tears, as it has come to be known, one of the most disgraceful and dishonorable chapters in American history.

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**Critical Thinking Questions**

1. What was the Indian Removal Act?
2. What did the Ladies of Steubenville, Ohio, mean when they said the Native Americans had “the undoubted natural right” to their lands?
3. What was the significance of *Worcester v. Georgia* (1831) and *Cherokee Nation v. Georgia* (1831)?
4. What objections did the Cherokee make to the Treaty of New Echota? Were these objections valid? Can you think of other objections that might have been made?
5. How did Jackson understand his constitutional duty to enforce the law with respect to Indian Removal? How would you assess that understanding?
<table>
<thead>
<tr>
<th>Event</th>
<th>Value and/or constitutional principle</th>
<th>Was this value reflected in this event? Why or why not?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jackson’s First Message to Congress</td>
<td>Respect</td>
<td></td>
</tr>
<tr>
<td>Indian Removal Act</td>
<td>Majority rule versus minority rights;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Representation</td>
<td></td>
</tr>
<tr>
<td>Supreme Court cases <em>Worcester v. Georgia</em> (1831) and <em>Cherokee Nation v. Georgia</em> (1831)</td>
<td>Responsibility; Separation of powers</td>
<td></td>
</tr>
<tr>
<td>Treaty of New Echota</td>
<td>Honor; Property rights</td>
<td></td>
</tr>
</tbody>
</table>
Directions: Discuss the following questions.

1. Should Jackson have signed the Indian Removal Act into law?

2. What action, if any, should Jackson have taken to enforce the Supreme Court decision that Georgia laws had no force against the Cherokee?

3. Should Jackson have signed the Treaty of New Echota?

4. Who was responsible for the Treaty of New Echota? How much responsibility belongs to Jackson? The Senate? The people?

5. Jackson believed that each department of government had the power to interpret the Constitution. What arguments can be offered for and against this position?

6. Is the fact that an action has been determined to be constitutional mean that that action is necessarily just or right?

7. What should the people do when powerful branches of government do bad things?
The consequences of a speedy removal will be important to the United States, to individual States, and to the Indians themselves.

By opening the whole territory between Tennessee on the north and Louisiana on the south to the settlement of the whites it will incalculably strengthen the southwestern frontier and render the adjacent States strong enough to repel future invasions without remote aid. It will relieve the whole State of Mississippi and the western part of Alabama of Indian occupancy, and enable those States to advance rapidly in population, wealth, and power.

It will separate the Indians from immediate contact with settlements of whites; free them from the power of the States; enable them to pursue happiness in their own way and under their own rude institutions; will retard the progress of decay, which is lessening their numbers, and perhaps cause them gradually, under the protection of the Government and through the influence of good counsels, to cast off their savage habits and become an interesting, civilized, and Christian community.

The waves of population and civilization are rolling to the westward, and we now propose to acquire the countries occupied by the red men of the South and West by a fair exchange, and, at the expense of the United States, to send them to land where their existence may be prolonged and perhaps made perpetual. Doubtless it will be painful to leave the graves of their fathers; but what do they more than our ancestors did or than our children are now doing? To better their condition in an unknown land our forefathers left all that was dear in earthly objects.

What good man would prefer a country covered with forests and ranged by a few thousand savages to our extensive Republic, studded with cities, towns, and prosperous farms embellished with all the improvements which art can devise or industry execute, occupied by more than 12,000,000 happy people, and filled with all the blessings of liberty, civilization and religion?

Can it be cruel in this Government when, by events which it can not control, the Indian is made discontented in his ancient home, to purchase his lands, to give him a new and extensive territory, to pay the expense of his removal, and support him a year in his new abode? How many thousands of our own people would gladly embrace the opportunity of removing to the West on such conditions! If the offers made to the Indians were extended to them, they would be hailed with gratitude and joy.

And is it supposed that the wandering savage has a stronger attachment to his home than the settled, civilized Christian? Is it more afflicting to him to leave the graves of his fathers than it is to our brothers and children? Rightly considered, the policy of the General Government toward the red man is not only liberal, but generous. He is unwilling to submit to the laws of the States and mingle with their population. To save him from this alternative, or perhaps utter annihilation, the General Government kindly offers him a new home, and proposes to pay the whole expense of his removal and settlement.
The Supreme Court case of *Brown v. Board of Education* (1954), with its declaration that segregated public schools were unconstitutional, overturned decades of precedent and challenged deeply-held social traditions. Southern resistance to the decision was widespread. President Dwight D. Eisenhower was not enthusiastic about federal judicial intervention in public education, but he carried out his constitutional responsibility to enforce the law by implementing desegregation in the District of Columbia. Not all state governments were quick to comply with the Supreme Court’s order to integrate “with all deliberate speed” and many fought against it openly. Arkansas Governor Orval Faubus ordered his state’s National Guard to block the entry of nine newly-enrolled African American students to Central High School in Little Rock. A violent mob gathered in front of the school, and city police failed to control it. Finally, when asked for assistance by the Mayor of Little Rock, President Eisenhower believed his constitutional duty to take care that the laws were faithfully executed left him no choice but to intervene, even to the point of using military force against American citizens.

**Objectives**

Students will:
- Understand the events leading up to and including the Little Rock Crisis.
- Analyze President Eisenhower’s constitutional justification for his actions.
- Assess the President’s decision to use military force to prevent violent opposition to a court order.

**Critical Engagement Question**

Should President Dwight D. Eisenhower have used federal troops to enforce a federal court’s order to integrate schools in Little Rock, Arkansas?

**Materials**

- **Handout A**: Eisenhower and the Little Rock Crisis
- **Web Resource**: Little Rock Crisis
- **Images at** www.ArticleII.org
- **Handout B**: Document-Based Question
- **Handout C**: Analyzing Documents

**Background/Homework**

Have students read **Handout A**: Dwight D. Eisenhower and the Little Rock Crisis and answer the questions.

**Day One**

**Warm-Up [10 minutes]**

A. Using available technology, download and print or project the two Little Rock Crisis images available at www.ArticleII.org/units/enforce.
B. Ask students for their impressions of the images:
   - What are people doing? What are people NOT doing?
   - What kinds of expressions or attitudes do you see?
   - Are there law enforcement officers present? If so, do they seem to be working to stop the violence?
   - What do these images reveal about Little Rock at the time they were taken?

**Activity [30 minutes]**

A. Distribute Handout B: Document-Based Question. With students working in pairs, or leading the class as a large group, read each of the documents and answer the scaffolding questions that follow each one.

B. As they progress through the documents, have students fill in the concept map on Handout C: Analyzing Documents.

**Wrap-Up [10 minutes]**

A. Debrief the class about what they have learned about the events from the first three and a half weeks of September, 1957.

B. Ask students for their initial responses to the key question: How would they assess Eisenhower's constitutional justification for using federal troops to enforce a court's order to integrate?

**Homework**

Have students continue to annotate Handouts B and C as needed to prepare to answer the key question during the next class.

**Day Two**

**Activity [50 minutes]**

Give students the entire class period to write a well-organized essay in response to the key question on Handout B.

**Extensions**

A. Have students read Eisenhower's entire radio address and summarize its key points. The document can be found at www.ArticleII.org.

B. Have students research the lives of the Little Rock Nine: Carlotta Walls, Jefferson Thomas, Elizabeth Eckford, Thelma Mothershed, Melba Pattillo, Terrence Roberts, Gloria Ray, Minnijean Brown, and Ernest Green.
President Eisenhower looked at the telegram from the Mayor of Little Rock. It told of a mob in front of a school, angered over a court’s order to integrate. The mob was cursing, attacking black reporters, and blocking the entry of nine African American students. Eisenhower was torn. He did not want to use federal troops against Americans. But given his constitutional responsibility to ensure that the laws were faithfully executed, could he allow mob-rule in Little Rock? He knew that either way, he would have critics to answer to. He sat down, cleared his head, and began to write down the reasons for what he was about to do….

Segregation and the Courts
Since Reconstruction, many aspects of American life were segregated. In Southern states, as well as some Northern ones, laws known as Jim Crow laws permitted and often required segregated bathrooms, drinking fountains, parks, restaurants, and other public spaces. The Supreme Court upheld this legal practice in the case of Plessy v. Ferguson (1896).

A half century later, the Court reversed the Plessy decision. Brown v. Board of Education (1954) declared segregation in public schools “inherently unequal” and unconstitutional. In a related case known as Brown II (1955), the Court ordered schools to desegregate “with all deliberate speed.”

Responses to Brown
The Brown decision was hailed as a victory for equal treatment under law. It recognized the color-blind nature of the Constitution, and that government cannot treat people differently based on their race. But the decision was also criticized by some for not relying on strict constitutional principles and depending too heavily on social science. Southern resistance to the Brown II order was widespread. Many saw the decision as an infringement on powers reserved to the states under the Constitution.

President Dwight D. Eisenhower was among those who had reservations about the decision. He believed that schools were the wrong place to begin desegregating American society. He thought it would be more prudent to begin with places like parks and restaurants. Finally, Eisenhower believed that changes to traditional social practices could not be imposed by law, but had to come from the people themselves.

Despite his personal beliefs, Eisenhower performed his duty to ensure the laws were faithfully executed by enforcing desegregation in schools and other public facilities in the District of Columbia.

The Little Rock Crisis
The Little Rock school board planned to start integration in the 1957-58 school year and the federal district court ordered it to begin. Nine African American students enrolled at Central High School. Segregationists threatened to protest. Arkansas Governor Orval Faubus ordered the state’s National Guard to the school to “keep order.” But in fact, the Guard members blocked the African American students from entering the school. The federal district court ordered Governor Faubus to withdraw the Guard, which he did.

The nine students tried again three weeks later, this time escorted by city police.
They went in a rear door to avoid the angry mob that had once again gathered. African American journalists who had come to cover the event were attacked. Protesters soon forced their way into the building. For their own safety, police escorted the students out.

The Mayor of Little Rock sent President Eisenhower a telegram describing the events and concluding with a suggestion: “If the Justice Department desires to enforce the orders of the federal court in regard to integration in this city, the city police will be available to lend such support as you may require.”

Less than twenty-four hours later came a second telegram from the Mayor, telling of a mob larger than the day before and now begging for help: “I am pleading to you ... in the interest of humanity, law, and order ... to provide the necessary federal troops within several hours.”

Eisenhower hated the idea of using federal troops against Americans. However, he believed that his constitutional duty to enforce the law was, in his words, “inescapable.” His decision was the result of reflection and discussion with advisors. His handwritten notes show that he was concerned with protecting the image of the US as a nation committed to the rule of law.

The troops would be there “NOT to enforce integration, but to prevent opposition by violence to orders of a court.” He and his Attorney General discussed similar events from American history, including George Washington’s response to the Whiskey Rebellion. Finally, he reasoned that federalizing the Arkansas National Guard and sending the Army to Little Rock to enforce the court order would prevent pitting “brother against brother.”

**EXECUTIVE ORDER 10730**

Eisenhower issued a proclamation ordering the mob around the school to “disperse.” But again the mob returned. The next day, Eisenhower issued Executive Order 10730. This Order authorized military force “for the removal of obstruction of justice ... with respect to matters relating to enrollment and attendance at public schools in the Little Rock School District, Little Rock, Arkansas.”

A thousand members from the 101st Airborne Division arrived to keep the peace. Exercising his constitutional power, the President also placed all 10,000 men of the Arkansas National Guard under federal control, removing them from the command of Governor Faubus. The soldiers kept the crowd under control, in some cases escorting protesters away at gunpoint.

The students were able to attend class almost a month into the school year. But images of US soldiers pointing rifles and other weapons at Americans shocked the nation. Governor Faubus protested Eisenhower’s actions, saying, “My fellow citizens, we are now an occupied territory ... What is happening in America?” One US Senator from Georgia compared the US troops to Adolf Hitler’s storm troopers. Eisenhower did not make the decision lightly, and the debate over the wisdom of his response continues.

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**CRITICAL THINKING QUESTIONS**

1. Describe the significance of *Plessy v. Ferguson* (1896), *Brown v. Board of Education* (1954), and *Brown II* (1955) in one brief sentence each.
2. What was the “Little Rock Crisis”?
3. How did Eisenhower respond to the situation in Little Rock?
4. What was the constitutional support for his action?
5. Are there constitutional principles supporting opposition to Eisenhower’s action? Explain.
**Document-Based Question**

**Directions:** Read the key question and analyze the documents that follow.

**Key Question:**
Assess President Eisenhower’s constitutional justification for his decision to send federal troops to Little Rock, Arkansas, to enforce a federal court’s order to integrate public schools.

**Documents:**
- A The United States Constitution, 1789
- B The Tenth Amendment, 1791
- C The Fourteenth Amendment, 1868
- D “Terrence Roberts and Two Arkansas National Guardsmen,” September 4, 1957
- E Telegram from Little Rock Mayor Mann to President Eisenhower, 6:24 PM, September 23, 1957
- F Proclamation 3204, September 23, 1957
- G Telegram from Mayor Mann to President Eisenhower, 9:16 AM, September 24, 1957
- H Executive Order 10730, September 24, 1957
- I “Operation Arkansas: A Different Kind of Deployment Photo,” September 25, 1957
- J “Bayonet Point,” September 25, 1957
- K Eisenhower’s Address to the Nation, September 24, 1957
**Document A**

The United States Constitution, 1789

The executive power shall be vested in a President of the United States of America. ...The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States. ...He shall take care that the laws be faithfully executed....

- Summarize these constitutional duties of the President.
- What is the militia?

**Document B**

The Tenth Amendment, 1791

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

- If a power is not given to the national government in the Constitution, who keeps it?

**Document C**

The Fourteenth Amendment, 1868

No state shall ... deny to any person within its jurisdiction the equal protection of the laws.

- Put this clause of the Fourteenth Amendment in your own words.
“Terrence Roberts and two Arkansas National Guardsmen,” September 4, 1957

- What date was this photograph taken?
- What duties do the National Guard members seem to be carrying out with respect to student Terrence Roberts?
Telegram from Little Rock Mayor Mann to President Eisenhower,
6:24 PM, September 23, 1957

When was this telegram sent?
What is Mayor Mann’s message to the President?
How does Mann describe the “agitators”?

The city police, together with the state police, made a valiant effort to control the mob today at Central High School. In the final analysis, it was deemed advisable by the officers on the ground and in charge to have the colored children removed to their homes for safety purposes.

THE MOB THAT GATHERED WAS NO SPONTANEOUS ASSEMBLY. IT WAS

AGITATED, ARMED, AND ASSEMBLED BY A CONCERNED PLAN

ONE OF THE PRINCIPAL AGITATORS IN THE CROWD WAS A MAN BY THE
NAME OF JIMMY KABAN, WHO IS A POLITICAL AND SOCIAL INTIMATE OF
GOVERNOR FABIAN, AND WHOSE WIFE IS NOW WITH GOVERNOR’S PARTY
AT THE SOUTHERN GOVERNOR’S CONFERENCE. KABAN HAS A LONG RECORD
OF EXPERIENCE IN STRIKE-BREAKING, AND OTHER ACTIVITIES SUCH AS
HE ENGAGED IN TODAY.

THE MANNERS IN WHICH THE MOB WAS FORMED AND ITS ACTION,
TOGETHER WITH THE PRESENCE OF JIMMY KABAN, LEADS TO THE INEVITABLE

CONCLUSION THAT GOVERNOR FABIAN AT LEAST WAS CONSIDERED OF WHAT
WAS GOING TO TAKE PLACE.

DETAILED INFORMATION ON THE EVENTS OF THE DAY WILL BE TURNED OVER
TO THE JUSTICE DEPARTMENT FOR SUCH ACTION AS THE FEDERAL GOVERNMENT
DEEMS APPROPRIATE.

IF THE JUSTICE DEPARTMENT DESIRES TO ENFORCE THE ORDERS OF THE
FEDERAL COURT IN REGARD TO INTEGRATION IN THIS CITY, THE CITY POLICE
WILL BE AVAILABLE TO PROVIDE SUCH SUPPORT AS YOU MAY REQUIRE.

I AM NOT MAKING THIS KNOWN PUBLIC. THIS IS FOR YOUR INFORMATION
AND FOR THE JUSTICE DEPARTMENT TO USE AS IT CONSIDERS NECESSARY.

RECOMMENDATIONS MAINTAIN MAJOR LITTLE ROCK AREA.
Document F

Proclamation 3204, September 23, 1957

What does President Eisenhower order the people gathered in front of Central High School to do?

What constitutional authority does he claim?
Telegram from Mayor Mann to President Eisenhower, 9:16 AM, September 24, 1957

When was this telegram sent?
How does the message in this telegram differ from Mann's telegram in Document E? Why is this significant?
EXECUTIVE ORDER 10730

PROVIDING ASSISTANCE FOR THE REMOVAL OF AN
OBSTRUCTION OF JUSTICE WITHIN THE STATE OF ARKANSAS

... WHEREAS the command contained in ... Proclamation [3204] has not been obeyed and willful
obstruction of enforcement of said court orders still exists and threatens to continue....

Section 1. I hereby authorize and direct the Secretary of Defense to order into the active military service
of the United States as he may deem appropriate to carry out the purposes of this Order, any or all of
the units of the National Guard of the United States and of the Air National Guard of the United States
within the State of Arkansas to serve in the active military service of the United States for an indefinite
period and until relieved by appropriate orders.

SEC. 2. The Secretary of Defense is authorized and directed to take all appropriate steps to enforce
any orders of the United States District Court for the Eastern District of Arkansas for the removal
of obstruction of justice in the State of Arkansas with respect to matters relating to enrollment and
attendance at public schools in the Little Rock School District, Little Rock, Arkansas....

What type of document is this?
Why does Eisenhower refer to his earlier proclamation (Document F)?
What action does Eisenhower “authorize and direct” in Section 1?
What action does Eisenhower “authorize and direct” in Section 2?
“Operation Arkansas: A Different Kind of Deployment Photo,”
September 25, 1957

What date was this photograph taken?
What duties are the members of the 101st Airborne Division carrying out with respect to the African American students?
Why might this photo have been entitled “A Different Kind of Deployment Photo”?
What duties are the members of the 101st Airborne Division carrying out with respect to the integration protestors?

How does this action compare with the one depicted in Document D?
Eisenhower’s Address to the Nation, September 24, 1957

Our personal opinions about the [Brown v. Board of Education] decision have no bearing on the matter of enforcement. ...During the past several years, many communities in our Southern States have instituted [integration] plans. They thus demonstrated to the world that we are a nation in which laws, not men, are supreme. I regret to say that this truth—the cornerstone of our liberties—was not observed [at Central High School in Little Rock]....

The very basis of our individual rights and freedoms rests upon the certainty that the President and the Executive Branch of Government will support and insure the carrying out of the decisions of the Federal Courts, even, when necessary with all the means at the President’s command. Unless the President did so, anarchy would result. There would be no security for any except that which each one of us could provide for himself. ...Mob rule cannot be allowed to override the decisions of our courts.

The running of our school system and the maintenance of peace and order in each of our States are strictly local affairs and the Federal Government does not interfere except in a very few special cases and when requested by one of the several States. In the present case the troops are there, pursuant to law, solely for the purpose of preventing interference with the orders of the Court. The proper use of the powers of the Executive Branch to enforce the orders of a Federal Court is limited to extraordinary and compelling circumstances. Manifestly, such an extreme situation has been created in Little Rock....

- What does Eisenhower mean when he says the US is “a nation in which laws, not men, are supreme”?
- What “certainty” does Eisenhower call the “very basis of our individual rights and freedoms”?
- What two conditions does Eisenhower state must be present in order for the federal government to interfere in state and local affairs?
Analyzing Documents

Directions: For each document, explain how the Constitution applies, then draw additional lines between documents and explain the connections you see.

Document D

Document E

Document F

Document G

The Constitution

Document H

Document I

Document J

Document K
Key Question:
Assess President Eisenhower’s constitutional justification for his decision to send federal troops to Little Rock, Arkansas, to enforce a federal court’s order to integrate public schools.

Answer the key question in a well-organized essay that incorporates your interpretations of the documents and your own knowledge of history.
Overview

George Washington, always aware that as the new nation’s first President, his every action would be “drawn into precedent,” conducted himself both deliberately and decisively when farmers across the US resisted a new federal excise tax on liquor. He publicly involved other branches and levels of government in his decision process, and issued proclamations calling for peaceful resolutions before using military force to quash what has come to be known as the Whiskey Rebellion. His political opponents charged Washington and his political party with exaggerating (if not manufacturing) the crisis, and called his decision to lead several thousand militia troops against the farmers heavy-handed. However one judges Washington’s action, the events became the first public test of the President’s power to enforce federal law in the new commercial republic.

Objectives

Students will:
- Understand the historical events leading up to the Whiskey Rebellion.
- Analyze the Whiskey Rebellion from multiple perspectives.
- Evaluate Washington’s decision to use military force against rebelling farmers in 1794.
- Assess criticism of Washington’s handling of the Whiskey Rebellion.

Critical Engagement Question

Assess President George Washington’s decision to use military force to subdue the Whiskey Rebellion.

Materials

- Handout A: George Washington and the Whiskey Rebellion
- Handout B: Setting the Scene
- Handout C: Press Conference

Background/Homework

Have students read Handout A: George Washington and the Whiskey Rebellion and answer the questions.

Warm-Up [10 minutes]

A. Using an overhead of Handout B: Setting the Scene, lead the class to make a timeline of the major events leading up to the Whiskey Rebellion from 1790 to 1794. (Students can use Handout A and their textbooks for information.)
B. Ask students to summarize the events leading up to the Whiskey Rebellion in Pennsylvania, and the types of steps Washington took in addressing the situation.

**Activity [30 minutes]**

A. Let students know they will be preparing for a press conference on the events of the Whiskey Rebellion. Distribute Handout C: Press Conference. Students should circle their identity for the day’s activity and prepare to either ask or be asked questions.

B. Assign each student the role of George Washington, Alexander Hamilton, Western Pennsylvania Farmer, Tax Collector, James Wilson, Thomas Jefferson, Democratic Society Member, or Reporter.

C. Have all the Washingtons, all the Hamiltons, etc. meet in small groups together for a few minutes to discuss what they will say/ask at the press conference and complete Handout C.

D. After a few moments, have students jigsaw into new groups of seven with one Washington, one Hamilton, etc. Staying “in character,” students should ask and answer questions of each other. (All characters, not just Reporters, should ask questions at this point.)

E. While students are working, arrange six desks with name tags at the front of the room. Ask for volunteers to assemble a panel of the six historical figures while the rest of the class plays Reporters.

F. As time allows, conduct a “press conference,” encouraging Reporters to ask questions of all the historical figures.

**Wrap-Up [10 minutes]**

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

- Was Washington’s response appropriate to the situation?
  - Or was it excessive?

- Were his actions constitutional?

- Why do you think Washington consulted with other branches and levels of government in making the decision to use military force to subdue the Whiskey Rebellion?

**Homework**

Students should write a newspaper editorial about the events of the Whiskey Rebellion. The editorial should communicate the author’s opinion on the prudence and constitutionality of Washington’s response.

**Extension**

Have students read Washington’s Sixth Annual Message to Congress.

- In what ways does he refer to the Constitution?
- How does he explain his actions?
- How would students assess his explanation?

The document can be found at www.ArticleII.org/units/enforce.
George Washington and the Whiskey Rebellion

Many of the Founders, including George Washington, believed that one weakness of the Articles of Confederation was that the federal government could not deal firmly with domestic uprisings such as Shays’s Rebellion. The Constitution, ratified in 1789, created a strong central government. To support federal power to enforce the law, Congress passed the Militia Law of 1792. This law allowed Congress to raise a militia to “execute the laws of the union, (and) suppress insurrections.”

The Excise Tax

The national government had assumed state debts from the Revolutionary War. It was cash-strapped. Secretary of the Treasury Alexander Hamilton called for a 25 percent excise (sales) tax on liquor. The proposal was opposed by some in Congress who feared it would be oppressive. One Senator warned that the people would resist the tax: “War and bloodshed are the most likely consequence of all this.” Congress passed the tax in 1791.

Anger about the tax was widespread along the frontier from Pennsylvania to Georgia. Smaller distillers and farmers especially hated the tax, as it favored larger liquor producers with a “flat rate” that allowed them to pay less. Cash-poor farmers (who grew the grains used to make whiskey) were hit very hard when distilleries bought less of their crops.

The Rebellion

Many Americans along the frontier resented the tax from a distant legislature that they did not believe represented them well: Congress had failed to secure them from Indian attacks or put their interests first in other ways. To them, this new excise was like the unfair taxes imposed by the British just two decades before.

Those opposed to the tax met in “democratic societies” and “assemblies,” passing resolutions against the tax and petitioning for its repeal. They were unsuccessful. There were occasional outbreaks of opposition in rural areas. In rural areas where no one was willing to serve as tax collector, the taxes went unpaid.

Washington’s Response

In September of 1792 President Washington issued a proclamation calling for an end to activities designed “to obstruct the operation of the laws of the United States for raising a revenue upon spirits....”

By July of 1794, the tension had reached a breaking point. Tax collectors were harassed, tarred and feathered; one’s home was burned. In Western Pennsylvania, the rebellion was intense. Reports told that six thousand people were camped outside Pittsburgh threatening to march on the town.

Washington believed he had to act. He and his cabinet members met with Pennsylvania officials on August 2, 1794. They decided to present evidence of the violent resistance to Associate Justice of the Supreme Court James Wilson. In his notes of the meeting, one cabinet member explained, “This step was urged by the necessity of understanding without delay all the means, vested in the President for suppressing the progress of the mischief.”

After reviewing the evidence, Justice Wilson certified that the situation could not be controlled by only the civil
The Militia Assembles

The rebellion continued, so Washington ordered the militia to assemble against the insurgents. On September 25, 1794, he issued another Proclamation which read in part, "... I, George Washington, President of the United States, in obedience to that high and irresistible duty consigned to me by the Constitution 'to take care that the laws be faithfully executed,' ... do hereby declare and make known that... a militia... force which...is adequate to the exigency is already in motion..."

Washington had recruited men from Pennsylvania, Maryland, and New Jersey. In total, there were almost 13,000 men—about as many as had served in the entire Continental Army that defeated the British. Washington led the troops into Bedford—the first and only time a sitting US President has led troops into the field.

Criteria thinking questions

1. What federal law was the focus of protests in the Whiskey Rebellion?
2. Why did President Washington consider using military force against the protestors?
3. How did Washington involve other branches and levels of government in his decision?
4. Why did Washington blame "democratic societies" for the crisis? Did he go too far?
5. The Constitution assigns the President the responsibility to "take care" that laws are "faithfully executed" and makes him or her commander in chief of the military. How did Washington understand these duties?

The Aftermath

By the end of November, more than 150 people had been arrested; most were later freed due to lack of evidence. Two were convicted of treason, but Washington later pardoned those two. Washington's strong response to the Whiskey Rebellion became, as future-President James Madison put it, "a lesson to every part of the Union against disobedience to the laws."

Madison did not approve, however, when Washington condemned the "combinations" and "self-created societies" that petitioned Congress and organized resistance to the tax in his Sixth Annual Message to Congress later that fall. He believed the President had gone too far by condemning what Madison believed were activities protected by the First Amendment.

Public hostility to the excise tax, as well as negative reaction to Washington's actions, were partly responsible for growing opposition to the Federalist Party. Thomas Jefferson, who had resigned as Washington's Secretary of State amid growing conflict with Hamilton, hinted that the crisis was exaggerated and the show of force was a political move. "An insurrection was announced and proclaimed and armed against, but could never be found," Jefferson said. When the Federalists in Congress and the White House were turned out of office in 1800 and Jefferson was elected President, the excise tax was repealed.
1. **1789**: The _________________________ is ratified. It gives power to raise an army to Congress, and assigns the power of Commander in Chief to the President. The President is also charged with taking care that the laws are “faithfully executed.”

2. **1791**: Congress passes a ____% excise tax on ____________.

3. **1792**: Congress passes the _________________ of 1792. This law empowers Congress to raise a militia to “____________________________________________.”

4. **1792**: In response to outbreaks of resistance to the tax, President Washington issues a ______________ calling for ________________________.

5. **July 1794**: Events in Pennsylvania include: ______________________________________
   __________________________________________________________________________.

6. **August 2, 1794**: President Washington meets with _________________ to discuss what action to take, if any, with respect to the situation in Pennsylvania. He presents evidence to _________________ who will decide if the situation can be handled by civil authorities.

7. **August 7, 1794**: Washington issues a proclamation declaring ______________________
   __________________________________________________________________________.

8. **September 25, 1794**: Washington issues a proclamation declaring ______________________
   __________________________________________________________________________.
### PRESS CONFERENCE

**MY ROLE AT THE PRESS CONFERENCE:**
(Circle One)

<table>
<thead>
<tr>
<th>George Washington</th>
<th>Alexander Hamilton</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Pennsylvania Farmer</td>
<td>Tax Collector</td>
</tr>
<tr>
<td>James Wilson</td>
<td>Thomas Jefferson</td>
</tr>
<tr>
<td>“Democratic Society” member</td>
<td>Reporter</td>
</tr>
</tbody>
</table>

If you are playing the role of a historical figure, use **Handout B** and your textbook to summarize your role/contributions/thoughts about the following. Be prepared for some hard-hitting questions!

- the Excise Tax
- “democratic societies”
- the Whiskey Rebellion
- Washington’s response

If you are playing the role of a reporter, use **Handout B** and your textbook to compose one hard-hitting question for each of the historical figures who will be at the “press conference.” Questions should pertain to any or all of the following:

- the Excise Tax
- “democratic societies”
- the Whiskey Rebellion
- Washington’s response
Andrew Jackson pursued a policy of removing Native Americans from lands in the east to new territories west of the Mississippi. Removal was popular, as it would result in the opening of hundreds of thousands of acres to white settlement and gold mining. Jackson signed the Indian Removal Act, a federal law that empowered the President to negotiate treaties with Indian tribes with the goal of moving them west. Legislation designed to force Native Americans out was also passed at the state level. When Georgia ignored an 1831 Supreme Court ruling that state laws had no force against Indian tribes, Jackson turned a blind eye. Neither Jackson nor the US Senate listened when the Cherokee objected that the Treaty of New Echota was fraudulent. Jackson’s decisions regarding the enforcement of removal laws against Native Americans set the stage for the Trail of Tears, one of the most dishonorable events in American history.

Objectives
Students will:

- Understand some of the major events leading up to the Trail of Tears.
- Analyze American civic values and constitutional principles and their application to events during the Andrew Jackson administration.
- Assess the claim that the forced removal of American Indians from their native lands is one of the most dishonorable periods in American history.

Critical Engagement Question
Did a series of President Andrew Jackson’s decisions regarding Indian Removal conflict with America’s constitutional principles and civic values? If so, how?

Materials
- Handout A: Andrew Jackson and Indian Removal
- Handout B: America’s Constitutional Principles and Civic Values
- Handout C: Discussion Questions

Background/Homework
Have students read Handout A: Andrew Jackson and Indian Removal and answer the questions.

Warm-Up [15 minutes]
Ask students to brainstorm important American principles and values, and agree upon a short, simple definition for each. In addition to the ideas students generate, you may offer:
Honor: keeping one's word

Respect: esteem for others

Majority rule versus minority rights: natural rights are not subject to majority vote

Property rights: being able to keep one's possessions and the fruits of one's labor

Popular sovereignty: government and laws based on the consent of the governed

Representation: laws are only legitimate if the people they affect have a say in them

Responsibility: taking care of oneself, one's family, and one's community

Equal treatment under law: no one is above the law

Separation of powers: powers are divided among branches of government

**Activity [ 20 minutes ]**

A. Write the following quotation from the petition of the ladies of Steubenville, Ohio, on the board. “To you [Congress], then, as the constitutional protectors of the Indians within our territory, and as the peculiar guardians of our national character, .... we solemnly and earnestly appeal to save this remnant of a much injured people ... and to shelter the American character from lasting dishonor.”

B. Ask students: Why were the petitioners concerned about “lasting dishonor” to the American character?

C. Have students work in pairs to complete Handout B: America’s Constitutional Principles and Civic Values.

D. Reconvene the class and fill in the chart using an overhead of Handout B.

**Wrap-Up [ 15 minutes ]**

Distribute Handout C: Discussion Questions. As a large group, discuss the questions on the Handout.

**Homework**

Have students use one of the discussion questions from the lesson as a prompt and write a one-page response paper.

**Extensions**

A. Have students read an excerpt from Jackson's Second Message to Congress and write a one page response that might have been given by a member of Congress. The document can be found at www.ArticleII.org/units/enforce.

B. Have students write a one-page position paper arguing whether or not Indian Removal could have taken place after:
   - The passage of the Fourteenth Amendment?
   - The bombing of Pearl Harbor?
   - The passage of the Civil Rights Act of 1964?
Andrew Jackson and Indian Removal

Before he became President, Andrew Jackson had been involved in the removal of American Indians from various states in the US. In the 1810s, Jackson led military forces that removed Creek and Seminole tribes from lands in Alabama, Georgia, and Florida.

In his First Message to Congress in 1829, Jackson proposed (as his predecessor President James Monroe had done) that Indians be moved to areas west of the Mississippi. “This emigration should be voluntary,” he said, “for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers and seek a home in a distant land.” Ultimately, Jackson hoped, the Indians who remained in the East would assimilate. “Submitting to the laws of the States, and receiving, like other citizens, protection in their persons and property, they will ere long become merged in the mass of our population.”

The Indian Removal Act

Jackson pushed the Indian Removal Act through Congress, and signed it into law once both Houses approved it in 1830. This law authorized the President to negotiate treaties with Indian tribes, and to buy their land east of the Mississippi River in exchange for western lands outside of US territory.

In his Second Message to Congress, Jackson explained what he believed would be the benefits of “speedy removal”: States would be able to advance “in population, wealth, and power,” and the Indian tribes would be freed from state power and able to “pursue happiness in their own way … perhaps … become[ing] an interesting, civilized, and Christian community.”

Indian Removal was popular among white Americans. It was particularly popular in the South, where individuals stood most to gain from the opening up of Indian lands to white settlement and gold mining.

But many Americans, including Tennessee Congressman Davy Crockett, opposed removing the Indians from their lands. One 1830 petition from the Ladies of Steubenville, Ohio appealed to, “the undoubted natural right which the Indians have, to the land of their forefathers…” [emphasis original]. The petition concluded, “To you [Congress], then, as the constitutional protectors of the Indians within our territory, and as the peculiar guardians of our national character, … we solemnly and earnestly appeal to save this remnant of a much injured people … and to shelter the American character from lasting dishonor.”

The Supreme Court

Congress did not heed the petitions and legal steps towards removal continued. The state of Georgia passed a series of laws designed to persuade the Cherokee to give up their lands and leave. Some of these re-drew the boundaries of Cherokee lands; banned whites from entering their lands without a permit; and forbade the Cherokee from digging for gold.

Seven white missionaries living on Cherokee land appealed their case to the Supreme Court. In Worcester v. Georgia (1831), the Court declared that Georgia could not regulate activity on the Cherokee lands. Chief Justice John Marshall wrote, “The Cherokee nation, then, is a distinct community occupying its own territory.
in which the laws of Georgia can have no force. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the government of the United States.”

The state of Georgia ignored the decision and continued regulatory activity on Cherokee lands. When he heard of the ruling, Jackson is reported to have said, “John Marshall has made his decision, now let him enforce it!” He took no action against Georgia to enforce the ruling. Though the stage was set for a possible confrontation between Georgia and the federal government, or one between the national judiciary and executive branches, no such confrontation took place.

In another Supreme Court case, *Cherokee Nation v. Georgia* (1831), the Court expressly denied that the Cherokee were a “foreign nation” as referred to in the Constitution. “They may more correctly, perhaps, be denominated domestic dependent nations... Their relations to the United States resemble that of a ward to his guardian. They look to our Government for protection, rely upon its kindness and its power, appeal to it for relief to their wants, and address the President as their Great Father.” Therefore, the ruling held, they had no right to sue in federal court to prevent their removal from tribal lands.

At the time, most Americans did not believe that the US would ever extend beyond the Mississippi. Many truly believed that American Indians would benefit from self-government away from American settlers. Although there was some protest of Indian Removal, especially in the North, Jackson’s policies were popular. He was overwhelmingly reelected in 1832.

**Treaty of New Echota**

In 1835, the US government negotiated a treaty with representatives of the Cherokee in Georgia. The representatives were there against the wishes of the majority of the Cherokee people, as well as their leader, Chief John Ross. The Treaty of New Echota exchanged the Cherokee lands in the east for five million dollars and lands west of the Mississippi.

Chief Ross argued that the Treaty was a fraud and urged the US Senate not to ratify the treaty. However, it was approved and President Jackson signed it into law.

The Treaty provided a two-year period for Cherokee families to leave voluntarily, and gave them money for the journey. In the summer of 1838 the deadline passed. Jackson’s successor, President Martin Van Buren, ordered the US Army to proceed with forced removal. During the winter of 1838-1839, 14,000 Cherokee men, women, and children were forced to march from their homes to lands in present-day Oklahoma. Four thousand people died. Historians have called the Trail of Tears, as it has come to be known, one of the most disgraceful and dishonorable chapters in American history.

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**Critical Thinking Questions**

1. What was the Indian Removal Act?
2. What did the Ladies of Steubenville, Ohio, mean when they said the Native Americans had “the undoubted natural right” to their lands?
3. What was the significance of *Worcester v. Georgia* (1831) and *Cherokee Nation v. Georgia* (1831)?
4. What objections did the Cherokee make to the Treaty of New Echota? Were these objections valid? Can you think of other objections that might have been made?
5. How did Jackson understand his constitutional duty to enforce the law with respect to Indian Removal? How would you assess that understanding?
<table>
<thead>
<tr>
<th>Event</th>
<th>Value and/or constitutional principle</th>
<th>Was this value reflected in this event? Why or why not?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jackson’s First Message to Congress</td>
<td>Respect</td>
<td></td>
</tr>
<tr>
<td>Indian Removal Act</td>
<td>Majority rule versus minority rights; Representation</td>
<td></td>
</tr>
<tr>
<td>Supreme Court cases <em>Worcester v. Georgia</em> (1831) and <em>Cherokee Nation v. Georgia</em> (1831)</td>
<td>Responsibility; Separation of powers</td>
<td></td>
</tr>
<tr>
<td>Treaty of New Echota</td>
<td>Honor; Property rights</td>
<td></td>
</tr>
</tbody>
</table>
**Discussion Questions**

**Directions:** Discuss the following questions.

1. Should Jackson have signed the Indian Removal Act into law?

2. What action, if any, should Jackson have taken to enforce the Supreme Court decision that Georgia laws had no force against the Cherokee?

3. Should Jackson have signed the Treaty of New Echota?

4. Who was responsible for the Treaty of New Echota? How much responsibility belongs to Jackson? The Senate? The people?

5. Jackson believed that each department of government had the power to interpret the Constitution. What arguments can be offered for and against this position?

6. Is the fact that an action has been determined to be constitutional mean that that action is necessarily just or right?

7. What should the people do when powerful branches of government do bad things?
The consequences of a speedy removal will be important to the United States, to individual States, and to the Indians themselves. By opening the whole territory between Tennessee on the north and Louisiana on the south to the settlement of the whites it will incalculably strengthen the southwestern frontier and render the adjacent States strong enough to repel future invasions without remote aid. It will relieve the whole State of Mississippi and the western part of Alabama of Indian occupancy, and enable those States to advance rapidly in population, wealth, and power.

It will separate the Indians from immediate contact with settlements of whites; free them from the power of the States; enable them to pursue happiness in their own way and under their own rude institutions; will retard the progress of decay, which is lessening their numbers, and perhaps cause them gradually, under the protection of the Government and through the influence of good counsels, to cast off their savage habits and become an interesting, civilized, and Christian community.

The waves of population and civilization are rolling to the westward, and we now propose to acquire the countries occupied by the red men of the South and West by a fair exchange, and, at the expense of the United States, to send them to land where their existence may be prolonged and perhaps made perpetual. Doubtless it will be painful to leave the graves of their fathers; but what do they more than our ancestors did or than our children are now doing? To better their condition in an unknown land our forefathers left all that was dear in earthly objects.

What good man would prefer a country covered with forests and ranged by a few thousand savages to our extensive Republic, studded with cities, towns, and prosperous farms embellished with all the improvements which art can devise or industry execute, occupied by more than 12,000,000 happy people, and filled with all the blessings of liberty, civilization and religion?

Can it be cruel in this Government when, by events which it can not control, the Indian is made discontented in his ancient home, to purchase his lands, to give him a new and extensive territory, to pay the expense of his removal, and support him a year in his new abode? How many thousands of our own people would gladly embrace the opportunity of removing to the West on such conditions! If the offers made to the Indians were extended to them, they would be hailed with gratitude and joy.

And is it supposed that the wandering savage has a stronger attachment to his home than the settled, civilized Christian? Is it more afflicting to him to leave the graves of his fathers than it is to our brothers and children? Rightly considered, the policy of the General Government toward the red man is not only liberal, but generous. He is unwilling to submit to the laws of the States and mingle with their population. To save him from this alternative, or perhaps utter annihilation, the General Government kindly offers him a new home, and proposes to pay the whole expense of his removal and settlement.
The Supreme Court case of *Brown v. Board of Education* (1954), with its declaration that segregated public schools were unconstitutional, overturned decades of precedent and challenged deeply-held social traditions. Southern resistance to the decision was widespread. President Dwight D. Eisenhower was not enthusiastic about federal judicial intervention in public education, but he carried out his constitutional responsibility to enforce the law by implementing desegregation in the District of Columbia. Not all state governments were quick to comply with the Supreme Court’s order to integrate “with all deliberate speed” and many fought against it openly. Arkansas Governor Orval Faubus ordered his state’s National Guard to block the entry of nine newly-enrolled African American students to Central High School in Little Rock. A violent mob gathered in front of the school, and city police failed to control it. Finally, when asked for assistance by the Mayor of Little Rock, President Eisenhower believed his constitutional duty to take care that the laws were faithfully executed left him no choice but to intervene, even to the point of using military force against American citizens.

**Objectives**

Students will:

- Understand the events leading up to and including the Little Rock Crisis.
- Analyze President Eisenhower’s constitutional justification for his actions.
- Assess the President’s decision to use military force to prevent violent opposition to a court order.

**Materials**

- **Handout A**: Eisenhower and the Little Rock Crisis
- **Web Resource**: Little Rock Crisis
- **Images at** www.ArticleII.org
- **Handout B**: Document-Based Question
- **Handout C**: Analyzing Documents

**Background/Homework**

Have students read **Handout A: Dwight D. Eisenhower and the Little Rock Crisis** and answer the questions.

**Day One**

**Warm-Up** [10 minutes]

A. Using available technology, download and print or project the two Little Rock Crisis images available at www.ArticleII.org/units/enforce.
B. Ask students for their impressions of the images:
   - What are people doing? What are people NOT doing?
   - What kinds of expressions or attitudes do you see?
   - Are there law enforcement officers present? If so, do they seem to be working to stop the violence?
   - What do these images reveal about Little Rock at the time they were taken?

**Activity [30 minutes]**

A. Distribute **Handout B: Document-Based Question**. With students working in pairs, or leading the class as a large group, read each of the documents and answer the scaffolding questions that follow each one.

B. As they progress through the documents, have students fill in the concept map on **Handout C: Analyzing Documents**.

**Wrap-Up [10 minutes]**

A. Debrief the class about what they have learned about the events from the first three and a half weeks of September, 1957.

B. Ask students for their initial responses to the key question: How would they assess Eisenhower’s constitutional justification for using federal troops to enforce a court’s order to integrate?

**Homework**

Have students continue to annotate **Handouts B** and **C** as needed to prepare to answer the key question during the next class.

**Day Two**

**Activity [50 minutes]**

Give students the entire class period to write a well-organized essay in response to the key question on **Handout B**.

**Extensions**

A. Have students read Eisenhower’s entire radio address and summarize its key points. The document can be found at [www.ArticleII.org](http://www.ArticleII.org).

B. Have students research the lives of the Little Rock Nine: Carlotta Walls, Jefferson Thomas, Elizabeth Eckford, Thelma Mothershed, Melba Pattillo, Terrence Roberts, Gloria Ray, Minnijean Brown, and Ernest Green.
President Eisenhower looked at the telegram from the Mayor of Little Rock. It told of a mob in front of a school, angered over a court’s order to integrate. The mob was cursing, attacking black reporters, and blocking the entry of nine African American students. Eisenhower was torn. He did not want to use federal troops against Americans. But given his constitutional responsibility to ensure that the laws were faithfully executed, could he allow mob-rule in Little Rock? He knew that either way, he would have critics to answer to. He sat down, cleared his head, and began to write down the reasons for what he was about to do....

SEGREGATION AND THE COURTS
Since Reconstruction, many aspects of American life were segregated. In Southern states, as well as some Northern ones, laws known as Jim Crow laws permitted and often required segregated bathrooms, drinking fountains, parks, restaurants, and other public spaces. The Supreme Court upheld this legal practice in the case of Plessy v. Ferguson (1896).

A half century later, the Court reversed the Plessy decision. Brown v. Board of Education (1954) declared segregation in public schools “inherently unequal” and unconstitutional. In a related case known as Brown II (1955), the Court ordered schools to desegregate “with all deliberate speed.”

RESPONSES TO BROWN
The Brown decision was hailed as a victory for equal treatment under law. It recognized the color-blind nature of the Constitution, and that government cannot treat people differently based on their race. But the decision was also criticized by some for not relying on strict constitutional principles and depending too heavily on social science. Southern resistance to the Brown II order was widespread. Many saw the decision as an infringement on powers reserved to the states under the Constitution.

President Dwight D. Eisenhower was among those who had reservations about the decision. He believed that schools were the wrong place to begin desegregating American society. He thought it would be more prudent to begin with places like parks and restaurants. Finally, Eisenhower believed that changes to traditional social practices could not be imposed by law, but had to come from the people themselves.

Despite his personal beliefs, Eisenhower performed his duty to ensure the laws were faithfully executed by enforcing desegregation in schools and other public facilities in the District of Columbia.

THE LITTLE ROCK CRISIS
The Little Rock school board planned to start integration in the 1957-58 school year and the federal district court ordered it to begin. Nine African American students enrolled at Central High School. Segregationists threatened to protest.

Arkansas Governor Orval Faubus ordered the state’s National Guard to the school to “keep order.” But in fact, the Guard members blocked the African American students from entering the school. The federal district court ordered Governor Faubus to withdraw the Guard, which he did.

The nine students tried again three weeks later, this time escorted by city police.
They went in a rear door to avoid the angry mob that had once again gathered. African American journalists who had come to cover the event were attacked. Protesters soon forced their way into the building. For their own safety, police escorted the students out.

The Mayor of Little Rock sent President Eisenhower a telegram describing the events and concluding with a suggestion: “If the Justice Department desires to enforce the orders of the federal court in regard to integration in this city, the city police will be available to lend such support as you may require.”

Less than twenty-four hours later came a second telegram from the Mayor, telling of a mob larger than the day before and now begging for help: “I am pleading to you ... in the interest of humanity, law, and order ... to provide the necessary federal troops within several hours.”

Eisenhower hated the idea of using federal troops against Americans. However, he believed that his constitutional duty to enforce the law was, in his words, “inescapable.” His decision was the result of reflection and discussion with advisors. His handwritten notes show that he was concerned with protecting the image of the US as a nation committed to the rule of law.

The troops would be there “NOT to enforce integration, but to prevent opposition by violence to orders of a court.” He and his Attorney General discussed similar events from American history, including George Washington’s response to the Whiskey Rebellion. Finally, he reasoned that federalizing the Arkansas National Guard and sending the Army to Little Rock to enforce the court order would prevent pitting “brother against brother.”

**EXECUTIVE ORDER 10730**

Eisenhower issued a proclamation ordering the mob around the school to “disperse.” But again the mob returned. The next day, Eisenhower issued Executive Order 10730. This Order authorized military force “for the removal of obstruction of justice ... with respect to matters relating to enrollment and attendance at public schools in the Little Rock School District, Little Rock, Arkansas.”

A thousand members from the 101st Airborne Division arrived to keep the peace. Exercising his constitutional power, the President also placed all 10,000 men of the Arkansas National Guard under federal control, removing them from the command of Governor Faubus. The soldiers kept the crowd under control, in some cases escorting protesters away at gunpoint.

The students were able to attend class almost a month into the school year. But images of US soldiers pointing rifles and other weapons at Americans shocked the nation. Governor Faubus protested Eisenhower’s actions, saying, “My fellow citizens, we are now an occupied territory ... What is happening in America?” One US Senator from Georgia compared the US troops to Adolf Hitler’s storm troopers. Eisenhower did not make the decision lightly, and the debate over the wisdom of his response continues.

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**CRITICAL THINKING QUESTIONS**

1. Describe the significance of *Plessy v. Ferguson* (1896), *Brown v. Board of Education* (1954), and *Brown II* (1955) in one brief sentence each.
2. What was the “Little Rock Crisis”?
3. How did Eisenhower respond to the situation in Little Rock?
4. What was the constitutional support for his action?
5. Are there constitutional principles supporting opposition to Eisenhower’s action? Explain.
**DOCUMENT-BASED QUESTION**

**Directions:** Read the key question and analyze the documents that follow.

**Key Question:**
Assess President Eisenhower’s constitutional justification for his decision to send federal troops to Little Rock, Arkansas, to enforce a federal court’s order to integrate public schools.

**Documents:**

A  The United States Constitution, 1789  
B  The Tenth Amendment, 1791  
C  The Fourteenth Amendment, 1868  
D  “Terrence Roberts and Two Arkansas National Guardsmen,” September 4, 1957  
E  Telegram from Little Rock Mayor Mann to President Eisenhower, 6:24 PM, September 23, 1957  
F  Proclamation 3204, September 23, 1957  
G  Telegram from Mayor Mann to President Eisenhower, 9:16 AM, September 24, 1957  
H  Executive Order 10730, September 24, 1957  
I  “Operation Arkansas: A Different Kind of Deployment Photo,” September 25, 1957  
J  “Bayonet Point,” September 25, 1957  
K  Eisenhower’s Address to the Nation, September 24, 1957
**Document A**

**The United States Constitution, 1789**

The executive power shall be vested in a President of the United States of America. ...The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States. ...He shall take care that the laws be faith-fully executed.

- Summarize these constitutional duties of the President.
- What is the militia?

**Document B**

**The Tenth Amendment, 1791**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

- If a power is not given to the national government in the Constitution, who keeps it?

**Document C**

**The Fourteenth Amendment, 1868**

No state shall ... deny to any person within its jurisdiction the equal protection of the laws.

- Put this clause of the Fourteenth Amendment in your own words.
“Terrence Roberts and two Arkansas National Guardsmen,” September 4, 1957

What date was this photograph taken?

What duties do the National Guard members seem to be carrying out with respect to student Terrence Roberts?
Telegram from Little Rock Mayor Mann to President Eisenhower, 6:24 PM, September 23, 1957

When was this telegram sent?

What is Mayor Mann’s message to the President?

How does Mann describe the “agitators”?
Proclamation 3204, September 23, 1957

IMMEDIATE RELEASE

James C. Hagerty, Press Secretary to the President

THE WHITE HOUSE

U. S. NAVAL BASE
NEWPORT, RHODE ISLAND

OBSERVATION OF JUSTICE IN THE STATE OF ARKANSAS
BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS, certain persons in the State of Arkansas, individually and in unlawful assemblages, combinations, and conspiracies, have wilfully obstructed the enforcement of orders of the United States District Court for the Eastern District of Arkansas, with respect to matters relating to enrollment and attendance at public schools, particularly at Central High School, located in Little Rock School District, Little Rock, Arkansas; and

WHEREAS, such wilful obstruction of justice hinders the execution of the laws of that State and of the United States, and makes it impracticable to enforce such laws by the ordinary course of judicial proceedings; and

WHEREAS, such obstruction of justice constitutes a denial of the equal protection of the laws secured by the Constitution of the United States and impedes the course of justice under those laws:

NOW, THEREFORE, I, Dwight D. Eisenhower, President of the United States, under and by virtue of the authority vested in me by the Constitution and Statutes of the United States, including Chapter 15 of Title 10 of the United States Code, particularly Sections 332, 333 and 334 thereof, do command all persons engaged in such obstruction of justice to cease and desist therefrom, and to disperse forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Newport, Rhode Island this twenty-third day of September in the year of our Lord nineteen hundred and fifty-seven, and of the Independence of the United States of America the one hundred and eighty-second.

(SEAL)

DWIGHT D. EISENHOWER

By the President:

JOHN FOSTER DULLES

Secretary of State

What does President Eisenhower order the people gathered in front of Central High School to do?

What constitutional authority does he claim?
Telegram from Mayor Mann to President Eisenhower, 9:16 AM, September 24, 1957

When was this telegram sent?

How does the message in this telegram differ from Mann's telegram in Document E? Why is this significant?
EXECUTIVE ORDER 10730

PROVIDING ASSISTANCE FOR THE REMOVAL OF AN OBSTRUCTION OF JUSTICE WITHIN THE STATE OF ARKANSAS

WHEREAS the command contained in ... Proclamation [3204] has not been obeyed and willful obstruction of enforcement of said court orders still exists and threatens to continue....

Section 1. I hereby authorize and direct the Secretary of Defense to order into the active military service of the United States as he may deem appropriate to carry out the purposes of this Order, any or all of the units of the National Guard of the United States and of the Air National Guard of the United States within the State of Arkansas to serve in the active military service of the United States for an indefinite period and until relieved by appropriate orders.

SEC. 2. The Secretary of Defense is authorized and directed to take all appropriate steps to enforce any orders of the United States District Court for the Eastern District of Arkansas for the removal of obstruction of justice in the State of Arkansas with respect to matters relating to enrollment and attendance at public schools in the Little Rock School District, Little Rock, Arkansas....

- What type of document is this?
- Why does Eisenhower refer to his earlier proclamation (Document F)?
- What action does Eisenhower “authorize and direct” in Section 1?
- What action does Eisenhower “authorize and direct” in Section 2?
“Operation Arkansas: A Different Kind of Deployment Photo,”
September 25, 1957

What date was this photograph taken?
What duties are the members of the 101st Airborne Division carrying out with respect to the African American students?
Why might this photo have been entitled “A Different Kind of Deployment Photo”? 
What duties are the members of the 101st Airborne Division carrying out with respect to the integration protestors?

How does this action compare with the one depicted in Document D?
Eisenhower’s Address to the Nation, September 24, 1957

Our personal opinions about the [Brown v. Board of Education] decision have no bearing on the matter of enforcement. …During the past several years, many communities in our Southern States have instituted [integration] plans. They thus demonstrated to the world that we are a nation in which laws, not men, are supreme. I regret to say that this truth—the cornerstone of our liberties—was not observed [at Central High School in Little Rock]….

The very basis of our individual rights and freedoms rests upon the certainty that the President and the Executive Branch of Government will support and insure the carrying out of the decisions of the Federal Courts, even, when necessary with all the means at the President’s command. Unless the President did so, anarchy would result. There would be no security for any except that which each one of us could provide for himself. …Mob rule cannot be allowed to override the decisions of our courts.

The running of our school system and the maintenance of peace and order in each of our States are strictly local affairs and the Federal Government does not interfere except in a very few special cases and when requested by one of the several States. In the present case the troops are there, pursuant to law, solely for the purpose of preventing interference with the orders of the Court. The proper use of the powers of the Executive Branch to enforce the orders of a Federal Court is limited to extraordinary and compelling circumstances. Manifestly, such an extreme situation has been created in Little Rock….

- What does Eisenhower mean when he says the US is “a nation in which laws, not men, are supreme”?
- What “certainty” does Eisenhower call the “very basis of our individual rights and freedoms”?
- What two conditions does Eisenhower state must be present in order for the federal government to interfere in state and local affairs?
Directions: For each document, explain how the Constitution applies, then draw additional lines between documents and explain the connections you see.
Key Question:
Assess President Eisenhower’s constitutional justification for his decision to send federal troops to Little Rock, Arkansas, to enforce a federal court’s order to integrate public schools.

Answer the key question in a well-organized essay that incorporates your interpretations of the documents and your own knowledge of history.
A. Review the impeachment process established in the Constitution:
   1. Formal accusation of “high crimes and misdemeanors” by the House of Representatives
   2. Trial before the Senate with the Chief Justice presiding
   3. Conviction and removal from office only if at least two-thirds of Senators find the President guilty
   4. If convicted, the President’s punishment could be only removal from office and ineligibility to serve in any future position in the federal government.
   5. Once removed from office, the former President could still be brought to trial in the ordinary courts for any offenses he may have committed.

B. Distribute **Constitutional Connection: Impeachment and the Constitution** on the following page. Have students complete the Handout in pairs or trios, and then reconvene the class to share responses as a large group.

C. Debrief the class on the discussion. Was there general agreement on each scenario? If not, why? What sources should be used to determine if a presidential action warrants impeachment?
**IMPEACHMENT AND THE CONSTITUTION**

*Directions:* Using the actual wording of the Constitution as well as additional historical evidence, consider the following examples of possible misconduct by a President. Decide in each case if the Founders would have recommended impeachment and removal from office. If you were a member of Congress today, would you have recommended impeachment and removal from office? Explain.

**The Constitution, Article II, Section 4**
The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

**The Constitution, Article I, Section 3, Clause 6**
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.

**The Constitution, Article I, Section 3, Clause 7**
Judgment in Cases of Impeachments 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.

**The Founders and Impeachment**
The specific wording of the infractions for which a President could be impeached was a matter of discussion throughout the Constitutional Convention. The Founders considered the following phrases:
- “malpractice or neglect of duty”
- “incapacity, negligence or perfidy” (deliberate violation of trust)
- “scheme of peculation (misuse of public funds) or oppression”
- “abusing his power”
- “maladministration”
- “other high crimes and misdemeanors against the state”
- “betray[al] of his trust to foreign powers” (treason)

Alexander Hamilton addressed the issue of impeachment in *Federalist No. 65*, and stated that Presidents could be impeached for
- “offenses which proceed from the misconduct of public men”
- “abuse or violation of some public trust”
- “injuries done immediately to the society itself.”
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<th>ACTION</th>
<th>WOULD THE FOUNDERS HAVE RECOMMENDED IMPEACHMENT AND REMOVAL FROM OFFICE?</th>
<th>WOULD YOU RECOMMEND IMPEACHMENT AND REMOVAL FROM OFFICE?</th>
<th>WHY OR WHY NOT?</th>
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<td>1. The President sells military secrets to a foreign power.</td>
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<td>2. The President orders the detention of a racial or ethnic group for national security reasons.</td>
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<td>3. The President orders the assassination of a foreign leader.</td>
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<td>4. The President refuses to enforce laws passed by Congress.</td>
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<td>5. The President participates in a conspiracy to conceal evidence that his associates have committed a burglary.</td>
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<td>ACTION</td>
<td>WOULD THE FOUNDERS HAVE RECOMMENDED IMPEACHMENT AND REMOVAL FROM OFFICE?</td>
<td>WOULD YOU RECOMMEND IMPEACHMENT AND REMOVAL FROM OFFICE?</td>
<td>WHY OR WHY NOT?</td>
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<td>6. In a sexual harassment lawsuit, the President lies under oath.</td>
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<td>7. The President spends government money for a purpose specifically outlawed by Congress.</td>
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<td>8. The President lies to the American people to make it appear that military efforts overseas are more successful than they actually are.</td>
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<td>9. The President takes a lengthy vacation, leaving the country for three months.</td>
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<td>10. The President is frequently intoxicated.</td>
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What happens if the President breaks the law or misbehaves? During the summer of 1787, the Constitutional Convention considered this question, and devised a procedure known as impeachment to deal with it. Impeachment allows Congress to charge and try the Chief Executive, and if he is convicted, to remove him from office. Some of the delegates wanted the President impeachable for "maladministration," while others preferred to reserve impeachment for flagrant crimes such as "treason, bribery, or corruption." The final Constitution states that the President may be impeached for "high crimes and misdemeanors." This compromise language left the underlying debate unresolved, and left several questions unanswered: What does "high crimes and misdemeanors" mean? What constitutes an impeachable offense? Does impeachment require a crime, a serious crime, or no crime at all? In other words, may Congress impeach the President for political as well as criminal transgressions?

Seventy-nine years passed before the first presidential impeachment. When Abraham Lincoln was assassinated in 1865, Andrew Johnson became President. Claiming to follow in Lincoln’s footsteps, the new Chief Executive (a Southern Democrat) followed a different path, one hostile to African Americans and sympathetic to former Confederates. Republican Thaddeus Stevens tried in vain to persuade the House of Representatives to impeach Johnson on these political grounds alone. Johnson then attempted to fire his Secretary of War, Edwin M. Stanton, without Senate approval, an action that appeared to violate the recently-passed Tenure of Office Act. Republicans in the House of Representatives, now convinced that Johnson had committed a crime, voted 126-47 to impeach the President in February 1868. The House’s charges included a mixture of political misdeeds (obstructing Republican attempts to reconstruct the South after the Civil War) and criminal offenses (involving the violation of the Tenure of Office Act).

Once a President is impeached by the House, he is tried by the Senate. A committee from the House of Representatives prosecutes, the Senate acts as the jury, and the Chief Justice of the Supreme Court presides. A guilty verdict requires a two-thirds vote in the Senate. Johnson’s three-month trial took place early in 1868. The prosecution, led by Benjamin Butler, argued that Johnson had clearly committed a crime by breaking the Tenure of Office Act. Butler insisted
that Johnson’s political policies also merited a conviction. Johnson’s defense attorneys answered that the President’s behavior was not criminal because his interpretation of the Tenure of Office Act was reasonable, and that the law itself was of dubious constitutionality. As for Johnson’s political mistakes, the defense maintained that the correct remedy was for the voters to remove Johnson in an election, not for Congress to remove him by impeachment.

The final Senate vote was 35 guilty to 19 not guilty, one vote shy of the two-thirds necessary for conviction. Although the Republicans held over two-thirds of the seats in the Senate, they were unable to convict because the prosecution had presented a weak argument, leaving it unclear whether the case against Johnson was criminal or political. A few Republicans voted to acquit because they believed that the charges did not meet the “high crimes and misdemeanors” standard prescribed by the Constitution.

Several additional reasons explain the acquittal. During the trial, Johnson provided assurances that he would enforce laws instead of obstructing them. Considerable evidence also suggests that Johnson bought the verdict through patronage appointments and outright bribes paid to certain Senators. Some Senators hesitated to oust Johnson because his replacement in the White House would have been Benjamin Wade, the President-Pro Temp of the Senate, whose financial and Reconstruction policies many Republicans distrusted. Finally, many Republicans did not want to do anything to upset the anticipated election of Ulysses Grant as President later that year.

In 1974, Richard M. Nixon resigned from the presidency to avoid being impeached. After administration operatives were caught breaking into the Democratic Party headquarters at the Watergate office complex in Washington, D.C., Nixon covered up the crime. A Congressional investigation produced a bombshell revelation: The Oval Office had a recording system that taped all the President’s conversations. The tapes could prove whether Nixon himself had ordered the cover-up. The Supreme Court rejected Nixon’s claim that executive privilege allowed him to withhold the tapes. Once surrendered, the tapes—despite erasures—still contained a smoking gun proving Nixon’s complicity. With members of his own Republican Party turning against him and the House drawing up impeachment charges that were sure to pass by an overwhelming and bipartisan margin, Nixon resigned the presidency on August 9.

The only other presidential impeachment occurred in 1999, 133 years after Johnson’s narrow escape. In 1995, President Bill Clinton and White House intern Monica Lewinsky began a sexual affair. Lewinsky told a friend, who helped to pass the information to lawyers for Paula Jones, a former Arksansas state employee. Jones was suing Clinton for alleged sexual harassment before he became President. Seeking to demonstrate Clinton’s “pattern of behavior,” Jones’s lawyers requested testimony from Lewinsky. In an attempt to hide the affair, the President suggested that Lewinsky return gifts he had given her, and denied the affair in a taped deposition. When Independent Counsel Kenneth Starr (the Special Prosecutor investigating Clinton’s pre-presidential finances) learned about Lewinsky, he suspected that the President had obstructed justice and committed perjury. After the story went public in January 1998, Clinton issued another denial,
televised from the White House.

An FBI operation forced Lewinsky to reveal the affair, leaving the President no alternative but to admit to it as well. In a taped grand jury deposition, Clinton split legal hairs and used evasive language to deny that he had committed perjury or obstructed justice. Convinced of Clinton's guilt on both counts, Starr's report to the House of Representatives recommended impeachment. In strong agreement with Starr were many conservatives, who for years had targeted “Slick Willie” for alleged womanizing, pot smoking, draft dodging, and truth bending. While most Americans found Clinton's behavior reprehensible, they did not believe that it merited impeachment. In December 1998, the House of Representatives nevertheless impeached Clinton along strict party lines, with Republicans voting in favor of impeachment and Democrats voting against it.

The impeachment trial took place in January and February 1999, with Representative Henry Hyde leading the prosecution. Lewinsky, one of three taped witnesses, admitted the affair, but denied that the President lied about it or obstructed justice. Lacking a two-thirds majority in the Senate, the Republicans could not secure a conviction without the support of several Democrats. And with the public hostile to impeachment, Democratic senators refused to desert the President. In the end, Republican Senators instead defected to the Democratic side. On the charge of perjury, fifty-five Senators voted to acquit, forty-five to convict. On the charge of obstruction of justice, it was a fifty-fifty tie. Several Senators voted to acquit not because they considered Clinton innocent, but because they believed that the charges did not rise to the constitutional threshold of “high crimes and misdemeanors.” Clinton was later held in contempt of court by the judge in the Paula Jones proceeding (a case eventually thrown out of court) and was stripped of his legal license by the American Bar Association.

There are some striking parallels between the Johnson and Clinton impeachments: On both occasions, the Republicans impeached a Democratic President in a context of tremendous partisanship and presidential misconduct. Both trials grappled with the question of what constitutes an impeachable offense. Both impeachments failed to secure a conviction, suggesting that the President must commit a very serious crime indeed to be found guilty. After impeachment both Chief Executives found their presidencies in disarray and their legacies tarnished. Finally, and most important, the procedures designed by the Founders to handle presidential misconduct functioned successfully, allowing each constitutional crisis to be resolved effectively and decisively, and proving that even the President of the United States is accountable for his behavior.

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.
When Andrew Johnson became President upon Lincoln’s assassination, he hoped to restore the Union according to a plan that would be lenient toward the South. Lacking congressional support and political skills, Johnson found himself in a showdown with Republicans in Congress who wanted to remake the South in the image of the North, raise up blacks and poor whites, and guarantee full civil and political rights for the freedmen. This clash of goals and strategies led to the first presidential impeachment trial in our history—a test of the constitutional principles of separation of powers and checks and balances. In the end, the Founders’ mechanism of three co-equal branches of government proved strong enough to resolve the crisis.

**Objectives**

Students will:
- Understand the events that led to the impeachment trial of President Andrew Johnson.
- Analyze the constitutional and political issues that arose during the impeachment trial of President Andrew Johnson.
- Evaluate the effectiveness of the impeachment process as a way to preserve the separation of powers between the executive and legislative branches.

**Critical Engagement Question**

Was the impeachment of President Andrew Johnson a political tool?

**Materials**

- **Handout A:** The Impeachment of Andrew Johnson
- **Handout B:** The Tenure of Office Act
- **Handout C:** Senators’ Statements on the Trial of Andrew Johnson

**Background/Homework**

Have students read **Handout A: The Impeachment of Andrew Johnson** and answer the questions.

**Warm-Up [15 minutes]**

A. Use a transparency of **Handout B: The Tenure of Office Act** to lead a discussion of the law:
- Did this law require the President to get the Senate’s permission to fire Stanton?
If yes, do you believe this requirement itself is constitutional or unconstitutional? Explain. Note: You may wish to distribute copies of Appendix B: The United States Constitution and ask students to focus on Article II, Section 2.

B. Having students vote by secret ballot, ask students to vote for or against the conviction of Andrew Johnson.

**Activity [20 minutes]**

A. Divide the class into pairs and give each pair one card from Handout C: Senators’ Statements on the Trial of Andrew Johnson. Students should read the quotation and paraphrase it on their own paper. They should then complete the two questions. (While students are working, tally the votes from the secret ballot but do not reveal the outcome.)

B. Have one pair of students with the first quotation stand, read their quote to the class, and share their responses to the questions.

C. Repeat until all six quotations have been presented. Ask students which quote they found most convincing and why.

**Wrap-Up [15 minutes]**

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

- To what degree do you think the impeachment of Andrew Johnson was a trial where specific constitutional charges were asserted and proved?
- To what degree do you think the impeachment of Andrew Johnson was a political tool?
- If it was a political tool, was that appropriate? Explain.

B. Conduct a second secret ballot, again asking students to vote for or against conviction, and have a student volunteer tally the votes.

C. Reveal the results of the original vote, and then the second vote.

D. Ask students:

- What influenced their thought processes?
- The actual Senate vote was not by secret ballot. Does that matter?

**Homework**

A. Have students select a political cartoon about the impeachment trial available at www.HarpWeek.com. They should print out their cartoon and write a paragraph explaining the cartoonist’s point of view. Then have them draw their own cartoon in response to the cartoon’s message. Cartoons can be found at: www.impeach-andrewjohnson.com.

B. Andrew Johnson did not simply fade away after the end of his term of office in 1869. Have students conduct additional research and list his subsequent efforts to be involved in public life.

**Extensions**

A. Have students re-try Andrew Johnson, using the materials available at www.ArticleII.org/units/Impeach.

B. Have students learn more about the important individuals who played important roles in Johnson’s impeachment drama. Assign them a “character” to research, and then conduct a mock trial with students playing their roles. Students can begin their research at: www.impeach-andrewjohnson.com/11BiographiesKeyIndividuals/ListOfKeyPrincipals.htm

C. Have students research the story of Republican Senator Edmund Ross, who, in a surprise move, broke from his party to cast a vote for acquittal. The decision won him friends and enemies. Have students prepare a written or oral presentation on Ross and how, if at all, his story helps them understand to what degree politics can affect an impeachment trial.
When Andrew Johnson took the oath of office following Lincoln’s death on April 15, 1865, he saw his main task as “restoration” of the states to the Union as quickly as possible. The Thirteenth Amendment banned slavery nationally as of December of that year, but states were in control of the rights of the freedmen.

Congress was dominated by Republicans, and no states from the former Confederacy were represented. The Republicans believed that Congress—not the President—was in charge of a “reconstruction” process. States would return to the Union only after agreeing to a significant shift away from state power to federal control.

**Power Struggle**

While Congress was not in session in 1865, Johnson moved forward, quickly restoring the Southern states to the Union based mainly on their ratification of the Thirteenth Amendment which banned slavery. However, Congress refused to seat the legislators who had been elected in the restored states. This was because they were former Confederate leaders from states that had passed “black codes” that practically re-enslaved blacks.

Congress passed a number of laws protecting freedmen and restricting the powers of the states. Johnson vetoed them, and Congress overrode the vetoes. The growing tension between Johnson and Congress was reflected in Johnson’s Cabinet. (Most of the cabinet members had been appointed by Lincoln.) One of the most influential cabinet members was Secretary of War Edwin Stanton, who strongly opposed Johnson’s lenient approach toward the South.

**Call for Impeachment**

In February 1867, Congress passed the Tenure of Office Act. This law required the President to seek the Senate’s approval before removing an official whose appointment had required confirmation by the Senate. (The Constitution states that the President appoints Cabinet members and other officials with the advice and consent of the Senate; it does not say anything about dismissing officials.) Johnson’s entire Cabinet agreed that this law was probably unconstitutional. Johnson vetoed it, but Congress overrode the veto.

In the meantime, Stanton’s opposition to the President’s policies continued. Tired of Stanton’s resistance in his Cabinet, Johnson asked Stanton to resign. Stanton refused. Johnson then suspended Stanton from office, and named Lorenzo Thomas as the interim Secretary of War.

In January 1868, the Senate voted not to uphold Stanton’s suspension, and Stanton marched back into his old office. Nevertheless, the President sent Stanton a message removing him from office again, and advised the Senate that he had done so. Stanton barricaded himself in his office at the War Department, where he remained for several months. Armed volunteers moved in to the basement of the building, taking turns to be sure that Stanton would not be removed by force. The Republicans accelerated their
efforts, and on February 24, 1868, the House passed the Impeachment Resolution.

**The Trial**

The impeachment trial before the Senate began on March 30, 1868. The President’s defense team made the following points:

1. The language of the Tenure of Office Act was unclear, leaving doubt about whether it covered Stanton’s situation. Stanton had been appointed by Lincoln, not by Johnson.
2. The Tenure of Office Act interfered with the President’s constitutional power to “take care that the laws be faithfully executed.” A President cannot carry out the law if he cannot trust his advisers.
3. The proper way to remove a President for political misdeeds was through an election, not impeachment.

The President’s accusers made the following main points:

1. The President had clearly violated the Tenure of Office Act by dismissing Stanton without the consent of the Senate.
2. It is the President’s duty to faithfully execute a law passed by Congress, even if he believes it to be unconstitutional.

**Results**

The core of the trial was about the Tenure of Office Act, but the issues were much broader than that. Johnson’s accusers argued that not only had he violated the Tenure of Office Act, but also that he represented the return of “Slave Power” to the United States. Johnson’s defenders accused Republicans of using impeachment as a political tool.

Thirty-five Senators voted to convict Johnson, and nineteen voted to acquit. This was one vote short of the two-thirds majority that the Constitution requires to remove a President from office. President Johnson served the remaining ten months of his term as President. He continued to veto bills that he saw as unconstitutional, but he enforced the laws when passed. Congress continued to override the vetoes.

When Johnson died of a stroke on July 31, 1875, he was buried as he had requested, wrapped in a US flag, with his head resting on his copy of the US Constitution.

The Tenure of Office Act was largely repealed in 1887, and its principles were declared unconstitutional by the Supreme Court in 1926.

---

**Critical Thinking Questions**

1. What was the main difference between President Johnson’s approach to “restoration” and the Republicans’ approach to Reconstruction?
2. Why did President Johnson remove Secretary of War Edwin Stanton from office?
3. What was the Tenure of Office Act?
4. Did Johnson’s impeachment trial prove the effectiveness of the impeachment process as a way to preserve the separation of powers between the Executive and Legislative branches? Why or why not?
...Every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate...is, and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified. Except as herein otherwise provided: Provided that the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster-General, and Attorney-General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed and for one month thereafter, subject to removal by and with the advice and consent of the Senate....

And be it further enacted, That every removal, appointment, or employment, made, had, or exercised, contrary to the provisions of this act, ... shall be deemed, and are hereby declared to be, high misdemeanors.
This is one of the last great battles with slavery. Driven from these legislative Chambers; driven from the field of war, this monstrous power has found a refuge in the Executive Mansion. ...Nobody can question it. Andrew Johnson is the impersonation of the tyrannical Slave Power. In him it lives again.

—Charles Sumner

Restate in your own words: _______________________________________________

For Conviction Against Conviction

To what degree does this quotation raise political issues? 1 - 2 - 3 - 4 - 5
To what degree does this quotation raise constitutional issues? 1 - 2 - 3 - 4 - 5

The formal accusation is founded on certain recent transgressions, enumerated [listed] in articles of impeachment, but it is wrong to suppose that this is the whole case. ...It is unpardonable to higgle over words and phrases when for more than two years the tyrannical pretensions of this offender ... have been manifest in their terrible, heartrending consequences.

—Charles Sumner

Restate in your own words: _______________________________________________

For Conviction Against Conviction

To what degree does this quotation raise political issues? 1 - 2 - 3 - 4 - 5
To what degree does this quotation raise constitutional issues? 1 - 2 - 3 - 4 - 5
If the President issued an order for the removal of Mr. Stanton and the appointment of Thomas without advice and consent of the Senate, it being then in session, then he acted in palpable violation of the plain letter of the Constitution, and is chargeable with a high misdemeanor in office. The production of his own order removing Stanton, and of his letter of authority to Thomas, commanding him to take possession of the War Office, are all the proofs necessary to establish his guilt.

—Richard Yates

Restate in your own words: ____________________________________________

For Conviction | Against Conviction
To what degree does this quotation raise political issues? | 1 - 2 - 3 - 4 - 5
To what degree does this quotation raise constitutional issues? | 1 - 2 - 3 - 4 - 5

It is ... charged that Andrew Johnson has violated the Constitution. The fact may be so, but where is the evidence of it to be found in this record? ... Once set the example of impeaching a President for what, when the excitement of the hour shall have subsided, will be regarded as insufficient causes ... no future President will be safe who happens to differ with a majority of the House and two thirds of the Senate on any measure deemed by them important, particularly if of a political character. ...What then becomes of the checks and balances of the constitution, so carefully devised and so vital to its perpetuity? They are all gone.

—Lyman Trumbull

Restate in your own words: ____________________________________________

For Conviction | Against Conviction
To what degree does this quotation raise political issues? | 1 - 2 - 3 - 4 - 5
To what degree does this quotation raise constitutional issues? | 1 - 2 - 3 - 4 - 5
I cannot agree to destroy the harmonious working of the Constitution for the sake of getting rid of an unacceptable President. Whatever may be my opinion of the incumbent, I cannot consent to trifle with the high office he holds. I can do nothing which, by implication, may be construed into an approval of impeachments as a part of future political machinery.

–James Grimes

Restate in your own words: ____________________________________________

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To the suggestion that popular opinion demands the conviction of the President..., I reply that he is not now on trial before the people, but before the Senate. ...The people have not heard the evidence as we have heard it. The responsibility is not on them, but upon us. They have not taken an oath to “do impartial justice according to the Constitution and the laws.” I have taken that oath.

–William P. Fessenden

Restate in your own words: ____________________________________________

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OVERVIEW

In 1974, Richard M. Nixon became the only President in US history to resign from the presidency. After administration operatives were caught breaking into the Democratic Party headquarters at the Watergate office complex in Washington, DC, Nixon covered up the crime. A Congressional investigation produced a stunning revelation: The Oval Office had a recording system that taped all the President’s conversations. The tapes could prove whether Nixon himself had ordered the cover-up. The Supreme Court rejected Nixon’s claim that executive privilege allowed him to withhold the tapes. With members of his own Republican Party turning against him and the House drawing up impeachment charges that were sure to pass, Nixon resigned the presidency on August 9. The events raised serious questions about the definition, use, and abuse of executive authority.

OBJECTIVES

Students will:
- Understand the events of the Watergate scandal.
- Analyze several Presidents’ use of executive privilege.
- Evaluate President Richard Nixon’s assertion of executive privilege.

CRITICAL ENGAGEMENT QUESTION

To what extent was Nixon’s use of executive privilege consistent with precedent and with the Constitution?

MATERIALS

- Handout A: Richard Nixon and the Watergate Scandal
- Handout B: A Brief History of Executive Privilege in the United States
- Handout C: Herblock Watergate Cartoons

Web Resource: Barbara Jordan's July 25, 1974 Speech to the House Judiciary Committee

BACKGROUND/HOMEWORK

Have students read Handout A: Richard Nixon and the Watergate Scandal and answer the questions.
**Warm-Up  [20 minutes]**

A. Divide the class into pairs or trios and give each student **Handout B: A Brief History of Executive Privilege in the United States**. Have each group discuss the attempts of each President listed to keep certain information secret in light of the Constitution's requirement that the President “take care that the laws be faithfully executed.” (Article II, Section 3)

B. Ask each group to report its results and reasoning for situations two through four, leaving aside discussion of Nixon for the moment.

C. Finally, have each group write on the board its “rule for executive privilege.” Compare and summarize the rules. Have the class vote on the best one, and write it on the board.

**Activity  [20 minutes]**

A. Have students summarize the facts of the Watergate Scandal and Nixon’s claim of executive privilege on **Handout B**. Go over responses and clarify any questions.

B. Ask students to debate whether Nixon’s claim was consistent with the class rule. (If needed, divide the class in half.)

C. After a few moments, ask students to recall the 1974 US Supreme Court case *US v. Nixon* from **Handout A**. The Court ruled that while executive privilege was an important and legitimate principle, it “must yield to the demonstrated, specific need for evidence in a pending criminal trial.” Do students agree with the Court? Why or why not?

**Wrap-Up  [10 minutes]**

Distribute **Handout C: Herblock Watergate Cartoons**. For each cartoon, discuss the following questions:

1. What is the date of the cartoon and why is that significant?
2. What symbolism do you note in the cartoon?
3. Do you think this cartoon helped people in 1974 to understand the Watergate scandal and its constitutional issues?
4. To what extent does the cartoon help you understand the scandal and its constitutional issues?

**Homework**

Play for students a recording of Representative Barbara Jordan’s speech available at [http://watergate.info/impeachment/74-07-25_barbara-jordan.shtml](http://watergate.info/impeachment/74-07-25_barbara-jordan.shtml) (or read a transcript at [www.ArticleII.org/units/Impeachment](http://www.ArticleII.org/units/Impeachment)). Have students make a list of the quotations Jordan sites from the Constitutional Convention and Ratifying Conventions of various states, as well as from later individuals. They should summarize each quotation and explain how it applies or does not apply to the accusations against Nixon.

**Extensions**

One month after Nixon’s resignation, President Ford issued a complete pardon for any crimes that Nixon may have committed as President. Have students complete the lesson on Nixon and Ford in this volume’s Transfer of Power unit to learn more about that episode in our nation’s history.

**The Issues Endure**

Have students prepare five or six questions to interview a parent, other family member, or friend who recalls the events of the Watergate Scandal. Students should record their interviews and share what they learned.
Richard Nixon and the Watergate Scandal

In 1968, Richard M. Nixon won one of the closest presidential elections in our history. Hoping to help the President win a second term, the Committee to Re-Elect the President (CREEP), planned and directed a number of illegal activities designed to spy on the Democrats, sabotage rival candidates, and silence political criticism of Nixon. These activities including hiring burglars to break in to the Democrats’ headquarters, photograph documents there, and install “bugs” (listening devices) on phones.

The Break-Ins

In May of 1972, men working in Nixon’s re-election campaign broke into the Democratic National Committee (DNC) Headquarters in the Watergate office-apartment complex in Washington, DC. About three weeks later, burglars went back to the DNC to repair some of the phone taps. The security guard, seeing that the doors had been tampered with, called the police. The five burglars, wearing business suits, blue surgical gloves, and surrounded by electronic equipment, were caught in the act and arrested at 2:30 a.m. Among the burglars’ belongings were found crisp, sequentially-numbered $100 dollar bills and an address book containing the contact information for some members of CREEP.

Nixon’s closest advisors met to discuss how to distance the President from this criminal activity. They knew that any investigation of the Watergate burglary would lead to disclosure of other illegal operations that had been carried out by Nixon supporters. These illegal operations included bribery, obstruction of justice, destruction of evidence, use of the CIA and FBI for political purposes, illegal campaign contributions, and others. An FBI study established that the Watergate break-in was part of a massive campaign of political spying and sabotage, but there was little press coverage of the Watergate investigation between June and November. In November, President Nixon won a landslide re-election victory.

Investigations

In January, 1973, five of the Watergate burglars pled guilty, and two Nixon aides were convicted of conspiracy, burglary, and wiretapping. Within the next few months, at least three separate investigations of the Watergate incident were conducted.

The White House issued a statement that the President had no prior knowledge of the break-in. Nixon himself maintained he knew nothing of a cover-up. But the investigation began to show otherwise. White House Counsel John Dean told investigators that he had had at least thirty-five discussions with Nixon about the Watergate cover-up. The President, Dean said, had not taken the appropriate steps to bring guilty parties to justice. Nixon maintained that he knew nothing about a cover-up, saying, “Not only was I unaware of any cover-up, but ... I was unaware of anything to cover up.” It was John Dean’s word against the President’s.

The White House stated that it would cooperate with the investigation, but Nixon refused to testify before the Senate committee or to turn over documents it had requested.
Executive Privilege

Nixon claimed that executive privilege guaranteed him confidentiality. Executive privilege is not mentioned in the Constitution, but Presidents since George Washington have maintained that the separation of powers doctrine gives them the right to keep certain information secret.

Then came a stunning revelation. The Senate Committee learned that Nixon had a secret, voice-activated recording system in each of his offices. Every conversation in these offices since 1971 had been recorded. Both the Senate committee and Special Prosecutor asked Nixon for the audio tapes, but Nixon refused to hand them over. He argued that they also were protected by executive privilege. The battle for the tapes continued for the next year between investigators and President Nixon. In October, Nixon began to hand over typed transcripts of parts of some tapes.

Impeachment Inquiry

In February 1974 the House of Representatives began an impeachment inquiry. By the end of April, Nixon still refused to release the tapes themselves, but announced in a televised address that he would release more edited transcripts.

Impeachment hearings began before the House Judiciary Committee in May. On July 24, the Supreme Court ordered Nixon to make the tapes available. In United States v. Nixon, the unanimous opinion of the Court was that, while executive privilege was an important and legitimate principle, “the generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial.”

Nixon’s impeachment by the House and conviction by the Senate were assured. In August, Nixon released what came to be known as the “Smoking Gun” tape, which proved that Nixon had participated in a cover-up of the Watergate burglary and other illegal activities at least since June 23, 1972—six days after the burglary. Nixon resigned on August 9, 1974, making Gerald Ford the thirty-eighth President.

Among the Watergate casualties were forty government officials indicted or jailed, a presidency that ended in disgrace, and a far-reaching loss of trust by the American people in their President.

However, the Watergate scandal and investigations also demonstrated the importance of a free press, and the Founders’ wisdom in setting up the complex system of checks and balances. Americans’ commitment to the rule of law ensures that that no one, not even the President, is above the law.

Critical Thinking Questions

1. What were the Watergate burglaries and what was their purpose?
2. What was the Watergate Scandal?
3. Why was the disclosure that Nixon recorded all his conversations so important to the investigation?
4. What is executive privilege? How did the Supreme Court rule concerning Nixon’s assertions of executive privilege?
5. To what extent did the Constitutional systems of separation of powers and checks and balances function appropriately in the case of Richard Nixon?
The term “executive privilege” is not mentioned in the Constitution. However, it has long been recognized that, in order for the President to get honest advice from his staff, they must be able to speak freely and in confidence. Therefore, according to the doctrine, the President must have the power to keep information secret.

**Directions:** Read the following examples of past Presidents’ efforts to keep certain information confidential. Discuss each situation with your group and answer the question below.

**Was the President’s effort to keep the information secret consistent with his constitutional duty to “take care that the laws be faithfully executed”?**

1. **George Washington (1796)**—Washington refused to provide the House of Representatives with information it requested regarding Jay’s Treaty. Washington’s reasoning was that only the Senate has a constitutional role in the treaty process. Washington provided the documents to the Senate but not the House.

2. **Thomas Jefferson (1807)**—When former Vice President Aaron Burr was tried for treason, he asked the court to require Jefferson to submit private letters that Burr believed would help his case. Jefferson at first refused, saying that release of the private letters would threaten public safety. Chief Justice John Marshall ruled that the Sixth Amendment requires that criminal defendants have access to such evidence, and that it was the Court’s job to determine whether there was any public danger involved. Jefferson complied with Marshall’s order.

3. **Dwight D. Eisenhower (1954)**—During hearings about the existence of Communists in the military, Eisenhower refused to turn over documents requested by a Senate committee and instructed all members of the Defense Department to refuse to discuss confidential matters with Sen. Joseph McCarthy’s committee. Eisenhower stated, “Any man who testifies as to the advice he gave me won’t be working for me that night.” The principle was first called “executive privilege” during Eisenhower’s term and was expanded in scope to apply to not only the President and his top advisers, but also anyone in the offices that make up the executive branch.
4. **Barack Obama (2009)**—A Virginia couple with hopes to win roles on a reality show were able to enter a state dinner at the White House even though they were not on the guest list. The two party crashers shook hands with the President and were photographed with him and the Vice President. Congress called the White House Social Secretary to testify about security processes. Obama claimed the Secretary would not testify and that she did not have to under the doctrine of executive privilege.

5. **Richard Nixon**

   Year: 

   Information requested: 

   Nixon’s response: 

   Other Presidents who invoked the principle of executive privilege include Jackson, Taft, Franklin D. Roosevelt, Truman, Kennedy, Clinton, and George W. Bush.

After considering these historical situations, work with your group to compose a rule that defines in what cases the use of executive privilege is consistent with the Constitution.

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________
“Listen, are you going to be loyal to me or to that (expletive deleted) Constitution?” —A 1974 Herblock Cartoon, copyright by The Herb Block Foundation

“How Can They Say He Hasn’t Faithfully Executed The Laws?” —A 1974 Herblock Cartoon, copyright by The Herb Block Foundation
"RESIGNATION" — A 1974 Herblock Cartoon, copyright by The Herb Block Foundation
In the highly charged partisan politics of the 1990s, President Bill Clinton’s personal indiscretions led to the second impeachment trial in our history. Independent Counsel Kenneth Starr was investigating Clinton’s pre-presidential financial dealings. In a separate case, Clinton was being sued by Paula Jones for sexual harassment. Jones called a young White House intern named Monica Lewinsky who had been having a relationship with the President to give testimony. Clinton denied the Lewinsky affair under oath in his deposition in the Jones case. This denial caught Starr’s attention, who suspected the President had committed perjury and obstructed justice. Starr assembled a grand jury and issued dozens of subpoenas, and eventually offered Lewinsky immunity in return for her testimony. When Clinton testified for Starr’s grand jury, he gave evasive answers. He ultimately admitted the Lewinsky affair to the American people that night. The House of Representatives impeached Clinton in 1998 on strict party lines, but in the Senate trial, Republicans fell far short of the two-thirds majority needed to convict.

**Objectives**

Students will:
- Understand the events that led to the impeachment trial of President Bill Clinton.
- Understand arguments made in Clinton’s defense and those made by his accusers.
- Assess whether Clinton was guilty of “high Crimes and Misdemeanors.”

**Background/Homework**

A. Have students read Handout A: The Impeachment of Bill Clinton and answer the questions.
B. Make several sets of the Glossary Cards. Give each student one term. Next class, have students explain the relevance of the term to Clinton’s impeachment.

**Warm-Up [20 minutes]**

A. Allow students who studied each term to discuss their definitions in pairs or trios.
Then have each pair/trio present their information to the class. Pairs/trios should share 1) the definition and 2) the significance of the term to understanding the essay.

Have students fill in both columns of **Handout C: Glossary** as you work.

Follow-up by discussing the critical thinking questions at the end of **Handout A**.

Ask students to write on their own paper a one sentence answer to the following question: Why was President Bill Clinton impeached?

**Activity [20 minutes]**

A. Post the two signs on **Handout D: Lickert Scale Signs** at opposite sides of the room. Direct students to stand up and take a position relative to the two signs.

B. Once students are in position, call them one by one to form new groups of three. Each group should contain one person who was closer to “constitutional reasons,” one who was closer to “political reasons,” and one who was closer to the middle.

C. Have students work in groups with the undecided student listening to the other two present their best arguments.

D. After ten or fifteen minutes, ask for a group to volunteer to present their arguments in a “fishbowl” at the front of the room.

**Wrap-Up [10 minutes]**

After one or two groups have presented, reconvene the class and ask:

- Did any “undecided” students come to a decision?
- Would anyone have changed their position on the scale? Why?

**Homework**

Have students write a paragraph explaining whether they believe Clinton was impeached for constitutional or political reasons.

**Extensions**

Some people say that Independent Counsel Kenneth Starr exerted far more energy in his pursuit of Clinton’s shortcomings than was justified. Have students conduct additional research and take a position on this claim, for example at [www.washingtonpost.com/wp-srv/politics/special/clinton/players/starr.htm](http://www.washingtonpost.com/wp-srv/politics/special/clinton/players/starr.htm)
William Jefferson Clinton, elected President in 1992, became the most investigated President in US history due to a combination of his personal flaws and the bitter partisanship that dominated Washington, DC.

Clinton’s political opponents alleged that Clinton had participated in dishonest financial dealings before he became President. In August of 1994, Republican Kenneth W. Starr was appointed independent counsel to investigate the Whitewater land development questions. Over the next four years, Starr’s investigation led to impeachment of the President on charges completely unrelated to land development deals.

Paula Jones
In 1994, former Arkansas state employee Paula Jones sued President Clinton for sexual harassment as a result of a 1991 encounter. The judge allowed Jones’ lawyers to look into any facts which might show that Clinton was a sexual harasser. Paula Jones’ lawyers soon heard from Linda Tripp, a former White House employee.

Tripp had befriended an unpaid intern named Monica Lewinsky. Lewinsky, then age 22, claimed that she had had a sexual affair with Clinton beginning in November, 1995. She described encounters that took place in the Oval Office. Without telling Lewinsky she was doing so, Tripp began to record their conversations in late September, 1997.

Throughout this time, Lewinsky maintained contact with the President. Wanted to return to work in the White House. President Clinton asked an adviser to find a job for Lewinsky in New York.

Paula Jones’s lawyers, trying to establish a pattern of Clinton’s sexual misconduct, called Tripp, Lewinsky, and others to testify. In January of 1998, Lewinsky signed an affidavit in the Jones investigation, denying the affair.

At this time, Tripp gave Starr recordings of her conversations with Lewinsky. She also met Lewinsky while wearing a wire for the purpose of recording their conversations.

Starr, unable to prove any wrongdoing on Clinton’s part related to financial dealings, became interested in the sexual harassment case. That month, Tripp helped Starr’s investigators lure Lewinsky to a Washington hotel where she was questioned for eleven hours regarding her relationship with Clinton.

Clinton’s Deposition
Clinton gave his pretrial deposition for the Jones lawsuit in January. He lied under oath when he said that he could not remember being alone with Lewinsky at the White House and when he stated, “I have never had sexual relations with Monica Lewinsky. I’ve never had an affair with her.”

Several days later, Clinton said at a press conference, “I did not have sexual relations with that woman, Ms. Lewinsky.” The denial would become one of the most infamous sound-bytes of his Presidency.

In April, the Jones lawsuit was dismissed. The judge ruled that Clinton’s conduct did not meet the legal definition necessary for a sexual harassment lawsuit. (Jones later agreed to drop her appeal in exchange for an $850,000 settlement.) Starr, however, continued his investigation into possible perjury and obstruction of justice by the President.
Kenneth Starr

Starr had empaneled a grand jury. He called White House staff, Clinton's friends and advisors, Secret Service agents, and even Lewinsky's mother to testify. He subpoenaed records from a bookstore where Lewinsky shopped. Starr demanded and received a sample of the President's DNA.

In July, Starr granted full immunity to Lewinsky in return for her cooperation in his investigation. She admitted that she had lied when denying her relationship with the President. She turned over to Starr a dress with a stain later determined to provide proof of sexual contact with Clinton.

In August, Clinton appeared before the same grand jury, testifying from the White House through a live closed-circuit television connection. He repeatedly refused to answer specific questions about his actions with Lewinsky.

That night, the President made a televised address to the American people. He admitted an inappropriate relationship with Lewinsky and apologized to his family and to the nation for his misleading statements about the affair.

In September 1998, Kenneth Starr delivered to the House Judiciary Committee the report of his four-year investigation which he said provided proof of eleven impeachable offences. The Starr Report was published in its entirety (accompanied by warnings about graphic content) in newspapers across the US on September 11, 1998. Clinton's approval ratings went up throughout this time.

Impeachment

The House of Representatives approved two articles of impeachment, all dealing with the President's lies regarding his relationship with Monica Lewinsky. In the trial before the Senate that began in January, 1999, House prosecutors stated that Clinton was guilty of “willful, premeditated, deliberate corruption of the nation's system of justice through perjury and obstruction of justice.” The President's lawyers responded, “The House Republicans' case ends as it began, an unsubstantiated, circumstantial case that does not meet the constitutional standard to remove the President from office.”

The President's job approval rating was over seventy percent, and informal head counts in the Senate indicated that the required two-thirds vote to convict could not be achieved. Both sides wanted to bring the impeachment proceeding to a quick end. One month later, forty-five Senators voted that the President was guilty of perjury, and fifty found him guilty of obstruction of justice. Since fewer than sixty seven Senators found him guilty, President Clinton would continue to serve out his second term which ended in January, 2001.

Critical thinking questions

1. Who was Paula Jones and why did she subpoena Monica Lewinsky and Linda Tripp?
2. Why did Kenneth Starr suspect Clinton was guilty of perjury and obstruction of justice?
3. In what situations did President Clinton give misleading testimony denying his sexual relationship with Monica Lewinsky?
4. What was the issue at the heart of the impeachment charges against President Clinton?
5. Why do you think Clinton’s approval ratings went up during the impeachment process?
6. Do you believe that President Clinton was guilty of “high Crimes or Misdemeanors”? Why or why not?
Affidavit

Obstruction of justice

Grand jury

Oval Office

House Judiciary Committee

Perjury

Immunity

Pretrial deposition

Impeach

Under oath

Independent Counsel
## Glossary

**Directions:** Define each term and explain how it helps you understand the investigation and impeachment of President Clinton.

<table>
<thead>
<tr>
<th>Term</th>
<th>What does this term mean?</th>
<th>How does this term apply to the investigation and impeachment of Clinton?</th>
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President Bill Clinton was investigated and eventually impeached for purely political reasons.

President Bill Clinton was investigated and eventually impeached for purely constitutional reasons.
Overview

When Andrew Johnson became President upon Lincoln’s assassination, he hoped to restore the Union according to a plan that would be lenient toward the South. Lacking congressional support and political skills, Johnson found himself in a showdown with Republicans in Congress who wanted to remake the South in the image of the North, raise up blacks and poor whites, and guarantee full civil and political rights for the freedmen. This clash of goals and strategies led to the first presidential impeachment trial in our history—a test of the constitutional principles of separation of powers and checks and balances. In the end, the Founders’ mechanism of three co-equal branches of government proved strong enough to resolve the crisis.

Objectives

Students will:

- Understand the events that led to the impeachment trial of President Andrew Johnson.
- Analyze the constitutional and political issues that arose during the impeachment trial of President Andrew Johnson.
- Evaluate the effectiveness of the impeachment process as a way to preserve the separation of powers between the executive and legislative branches.

Critical Engagement Question

Was the impeachment of President Andrew Johnson a political tool?

Materials

- Handout A: The Impeachment of Andrew Johnson
- Handout B: The Tenure of Office Act
- Handout C: Senators’ Statements on the Trial of Andrew Johnson

Background/Homework

Have students read Handout A: The Impeachment of Andrew Johnson and answer the questions.

Warm-Up [15 minutes]

A. Use a transparency of Handout B: The Tenure of Office Act to lead a discussion of the law:

- Did this law require the President to get the Senate’s permission to fire Stanton?
If yes, do you believe this requirement itself is constitutional or unconstitutional? Explain. Note: You may wish to distribute copies of Appendix B: The United States Constitution and ask students to focus on Article II, Section 2.

B. Having students vote by secret ballot, ask students to vote for or against the conviction of Andrew Johnson.

Activity [20 minutes]
A. Divide the class into pairs and give each pair one card from Handout C: Senators’ Statements on the Trial of Andrew Johnson. Students should read the quotation and paraphrase it on their own paper. They should then complete the two questions. (While students are working, tally the votes from the secret ballot but do not reveal the outcome.)

B. Have one pair of students with the first quotation stand, read their quote to the class, and share their responses to the questions.

C. Repeat until all six quotations have been presented. Ask students which quote they found most convincing and why.

Wrap-Up [15 minutes]
A. Conduct a large group discussion to answer the questions:

- To what degree do you think the impeachment of Andrew Johnson was a trial where specific constitutional charges were asserted and proved?
- To what degree do you think the impeachment of Andrew Johnson was a political tool?
- If it was a political tool, was that appropriate? Explain.

B. Conduct a second secret ballot, again asking students to vote for or against conviction, and have a student volunteer tally the votes.

C. Reveal the results of the original vote, and then the second vote.

D. Ask students:

- What influenced their thought processes?
- The actual Senate vote was not by secret ballot. Does that matter?

Homework
A. Have students select a political cartoon about the impeachment trial available at www.HarpWeek.com. They should print out their cartoon and write a paragraph explaining the cartoonist’s point of view. Then have them draw their own cartoon in response to the cartoon’s message. Cartoons can be found at: www.impeach-andrewjohnson.com.

B. Andrew Johnson did not simply fade away after the end of his term of office in 1869. Have students conduct additional research and list his subsequent efforts to be involved in public life.

Extensions
A. Have students re-try Andrew Johnson, using the materials available at www.ArticleII.org/units/Impeach.

B. Have students learn more about the important individuals who played important roles in Johnson’s impeachment drama. Assign them a “character” to research, and then conduct a mock trial with students playing their roles. Students can begin their research at: www.impeach-andrewjohnson.com/11BiographiesKeyIndividuals/ListOfKeyPrincipals.htm

C. Have students research the story of Republican Senator Edmund Ross, who, in a surprise move, broke from his party to cast a vote for acquittal. The decision won him friends and enemies. Have students prepare a written or oral presentation on Ross and how, if at all, his story helps them understand to what degree politics can affect an impeachment trial.
When Andrew Johnson took the oath of office following Lincoln’s death on April 15, 1865, he saw his main task as “restoration” of the states to the Union as quickly as possible. The Thirteenth Amendment banned slavery nationally as of December of that year, but states were in control of the rights of the freedmen.

Congress was dominated by Republicans, and no states from the former Confederacy were represented. The Republicans believed that Congress—not the President—was in charge of a “reconstruction” process. States would return to the Union only after agreeing to a significant shift away from state power to federal control.

Power Struggle

While Congress was not in session in 1865, Johnson moved forward, quickly restoring the Southern states to the Union based mainly on their ratification of the Thirteenth Amendment which banned slavery. However, Congress refused to seat the legislators who had been elected in the restored states. This was because they were former Confederate leaders from states that had passed “black codes” that practically re-enslaved blacks.

Congress passed a number of laws protecting freedmen and restricting the powers of the states. Johnson vetoed them, and Congress overrode the vetoes. The growing tension between Johnson and Congress was reflected in Johnson’s Cabinet. (Most of the cabinet members had been appointed by Lincoln.) One of the most influential cabinet members was Secretary of War Edwin Stanton, who strongly opposed Johnson’s lenient approach toward the South.

Call for Impeachment

In February 1867, Congress passed the Tenure of Office Act. This law required the President to seek the Senate’s approval before removing an official whose appointment had required confirmation by the Senate. (The Constitution states that the President appoints Cabinet members and other officials with the advice and consent of the Senate; it does not say anything about dismissing officials.) Johnson’s entire Cabinet agreed that this law was probably unconstitutional. Johnson vetoed it, but Congress overrode the veto.

In the meantime, Stanton’s opposition to the President’s policies continued. Tired of Stanton’s resistance in his Cabinet, Johnson asked Stanton to resign. Stanton refused. Johnson then suspended Stanton from office, and named Lorenzo Thomas as the interim Secretary of War.

In January 1868, the Senate voted not to uphold Stanton’s suspension, and Stanton marched back into his old office. Nevertheless, the President sent Stanton a message removing him from office again, and advised the Senate that he had done so. Stanton barricaded himself in his office at the War Department, where he remained for several months. Armed volunteers moved in to the basement of the building, taking turns to be sure that Stanton would not be removed by force. The Republicans accelerated their
efforts, and on February 24, 1868, the House passed the Impeachment Resolution.

**The Trial**
The impeachment trial before the Senate began on March 30, 1868. The President’s defense team made the following points:

1. The language of the Tenure of Office Act was unclear, leaving doubt about whether it covered Stanton’s situation. Stanton had been appointed by Lincoln, not by Johnson.
2. The Tenure of Office Act interfered with the President’s constitutional power to “take care that the laws be faithfully executed.” A President cannot carry out the law if he cannot trust his advisers.
3. The proper way to remove a President for political misdeeds was through an election, not impeachment.

The President’s accusers made the following main points:

1. The President had clearly violated the Tenure of Office Act by dismissing Stanton without the consent of the Senate.
2. It is the President’s duty to faithfully execute a law passed by Congress, even if he believes it to be unconstitutional.

**Results**
The core of the trial was about the Tenure of Office Act, but the issues were much broader than that. Johnson’s accusers argued that not only had he violated the Tenure of Office Act, but also that he represented the return of “Slave Power” to the United States. Johnson’s defenders accused Republicans of using impeachment as a political tool.

Thirty-five Senators voted to convict Johnson, and nineteen voted to acquit. This was one vote short of the two-thirds majority that the Constitution requires to remove a President from office. President Johnson served the remaining ten months of his term as President. He continued to veto bills that he saw as unconstitutional, but he enforced the laws when passed. Congress continued to override the vetoes.

When Johnson died of a stroke on July 31, 1875, he was buried as he had requested, wrapped in a US flag, with his head resting on his copy of the US Constitution.

The Tenure of Office Act was largely repealed in 1887, and its principles were declared unconstitutional by the Supreme Court in 1926.

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**Critical Thinking Questions**

1. What was the main difference between President Johnson’s approach to “restoration” and the Republicans’ approach to Reconstruction?
2. Why did President Johnson remove Secretary of War Edwin Stanton from office?
3. What was the Tenure of Office Act?
4. Did Johnson’s impeachment trial prove the effectiveness of the impeachment process as a way to preserve the separation of powers between the Executive and Legislative branches? Why or why not?
...Every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate...is, and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified. Except as herein otherwise provided: Provided that the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster-General, and Attorney-General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed and for one month thereafter, subject to removal by and with the advice and consent of the Senate....

And be it further enacted, That every removal, appointment, or employment, made, had, or exercised, contrary to the provisions of this act, ... shall be deemed, and are hereby declared to be, high misdemeanors.
# Senators’ Statements on the Trial of Andrew Johnson

1

This is one of the last great battles with slavery. Driven from these legislative Chambers; driven from the field of war, this monstrous power has found a refuge in the Executive Mansion. ...Nobody can question it. Andrew Johnson is the impersonation of the tyrannical Slave Power. In him it lives again.

—Charles Sumner

Restate in your own words: _______________________________________________

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2

The formal accusation is founded on certain recent transgressions, enumerated [listed] in articles of impeachment, but it is wrong to suppose that this is the whole case. ...It is unpardonable to higgle over words and phrases when for more than two years the tyrannical pretensions of this offender ... have been manifest in their terrible, heartrending consequences.

—Charles Sumner

Restate in your own words: _______________________________________________

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<tr>
<td>To what degree does this quotation raise constitutional issues?</td>
<td>1 - 2 - 3 - 4 - 5</td>
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</tbody>
</table>
If the President issued an order for the removal of Mr. Stanton and the appointment of Thomas without advice and consent of the Senate, it being then in session, then he acted in palpable violation of the plain letter of the Constitution, and is chargeable with a high misdemeanor in office. The production of his own order removing Stanton, and of his letter of authority to Thomas, commanding him to take possession of the War Office, are all the proofs necessary to establish his guilt.

–Richard Yates

Restate in your own words:  

For Conviction  Against Conviction

To what degree does this quotation raise political issues? 1 - 2 - 3 - 4 - 5
To what degree does this quotation raise constitutional issues? 1 - 2 - 3 - 4 - 5

It is ... charged that Andrew Johnson has violated the Constitution. The fact may be so, but where is the evidence of it to be found in this record? ... Once set the example of impeaching a President for what, when the excitement of the hour shall have subsided, will be regarded as insufficient causes ... no future President will be safe who happens to differ with a majority of the House and two thirds of the Senate on any measure deemed by them important, particularly if of a political character. ...What then becomes of the checks and balances of the constitution, so carefully devised and so vital to its perpetuity? They are all gone.

–Lyman Trumbull

Restate in your own words:  

For Conviction  Against Conviction

To what degree does this quotation raise political issues? 1 - 2 - 3 - 4 - 5
To what degree does this quotation raise constitutional issues? 1 - 2 - 3 - 4 - 5
I cannot agree to destroy the harmonious working of the Constitution for the sake of getting rid of an unacceptable President. Whatever may be my opinion of the incumbent, I cannot consent to trifle with the high office he holds. I can do nothing which, by implication, may be construed into an approval of impeachments as a part of future political machinery.

—James Grimes

Restate in your own words: _______________________________________________

For Conviction  Against Conviction

To what degree does this quotation raise political issues? 1 - 2 - 3 - 4 - 5
To what degree does this quotation raise constitutional issues? 1 - 2 - 3 - 4 - 5

To the suggestion that popular opinion demands the conviction of the President..., I reply that he is not now on trial before the people, but before the Senate. ...The people have not heard the evidence as we have heard it. The responsibility is not on them, but upon us. They have not taken an oath to “do impartial justice according to the Constitution and the laws.” I have taken that oath.

—William P. Fessenden

Restate in your own words: _______________________________________________

For Conviction  Against Conviction

To what degree does this quotation raise political issues? 1 - 2 - 3 - 4 - 5
To what degree does this quotation raise constitutional issues? 1 - 2 - 3 - 4 - 5
Constitutional Connection

To create a context for this lesson, students complete Constitutional Connection: Impeachment and the Constitution.

OVERVIEW

In 1974, Richard M. Nixon became the only President in US history to resign from the presidency. After administration operatives were caught breaking into the Democratic Party headquarters at the Watergate office complex in Washington, DC, Nixon covered up the crime. A Congressional investigation produced a stunning revelation: The Oval Office had a recording system that taped all the President’s conversations. The tapes could prove whether Nixon himself had ordered the cover-up. The Supreme Court rejected Nixon’s claim that executive privilege allowed him to withhold the tapes. With members of his own Republican Party turning against him and the House drawing up impeachment charges that were sure to pass, Nixon resigned the presidency on August 9. The events raised serious questions about the definition, use, and abuse of executive authority.

OBJECTIVES

Students will:
- Understand the events of the Watergate scandal.
- Analyze several Presidents’ use of executive privilege.
- Evaluate President Richard Nixon’s assertion of executive privilege.

CRITICAL ENGAGEMENT QUESTION

To what extent was Nixon’s use of executive privilege consistent with precedent and with the Constitution?

MATERIALS

- Handout A: Richard Nixon and the Watergate Scandal
- Handout B: A Brief History of Executive Privilege in the United States
- Handout C: Herblock Watergate Cartoons
- Web Resource: Barbara Jordan’s July 25, 1974 Speech to the House Judiciary Committee

BACKGROUND/HOMEWORK

Have students read Handout A: Richard Nixon and the Watergate Scandal and answer the questions.
**WARM-UP  [20 minutes]**

A. Divide the class into pairs or trios and give each student **Handout B: A Brief History of Executive Privilege in the United States**. Have each group discuss the attempts of each President listed to keep certain information secret in light of the Constitution’s requirement that the President “take care that the laws be faithfully executed.” (Article II, Section 3)

B. Ask each group to report its results and reasoning for situations two through four, leaving aside discussion of Nixon for the moment.

C. Finally, have each group write on the board its “rule for executive privilege.” Compare and summarize the rules. Have the class vote on the best one, and write it on the board.

**ACTIVITY  [20 minutes]**

A. Have students summarize the facts of the Watergate Scandal and Nixon's claim of executive privilege on **Handout B**. Go over responses and clarify any questions.

B. Ask students to debate whether Nixon’s claim was consistent with the class rule. (If needed, divide the class in half.)

C. After a few moments, ask students to recall the 1974 US Supreme Court case **US v. Nixon** from **Handout A**. The Court ruled that while executive privilege was an important and legitimate principle, it “must yield to the demonstrated, specific need for evidence in a pending criminal trial.” Do students agree with the Court? Why or why not?

**WRAP-UP  [10 minutes]**

Distribute **Handout C: Herblock Watergate Cartoons**. For each cartoon, discuss the following questions:

1. What is the date of the cartoon and why is that significant?
2. What symbolism do you note in the cartoon?
3. Do you think this cartoon helped people in 1974 to understand the Watergate scandal and its constitutional issues?
4. To what extent does the cartoon help you understand the scandal and its constitutional issues?

**HOMEWORK**

Play for students a recording of Representative Barbara Jordan’s speech available at [http://watergate.info/impeachment/74-07-25_barbara-jordan.shtml](http://watergate.info/impeachment/74-07-25_barbara-jordan.shtml) (or read a transcript at [www.ArticleII.org/units/Impeachment](http://www.ArticleII.org/units/Impeachment)). Have students make a list of the quotations Jordan sites from the Constitutional Convention and Ratifying Conventions of various states, as well as from later individuals. They should summarize each quotation and explain how it applies or does not apply to the accusations against Nixon.

**EXTENSIONS**

One month after Nixon’s resignation, President Ford issued a complete pardon for any crimes that Nixon may have committed as President. Have students complete the lesson on Nixon and Ford in this volume’s Transfer of Power unit to learn more about that episode in our nation’s history.

**THE ISSUES ENDURE**

Have students prepare five or six questions to interview a parent, other family member, or friend who recalls the events of the Watergate Scandal. Students should record their interviews and share what they learned.
In 1968, Richard M. Nixon won one of the closest presidential elections in our history. Hoping to help the President win a second term, the Committee to Re-Elect the President (CREEP), planned and directed a number of illegal activities designed to spy on the Democrats, sabotage rival candidates, and silence political criticism of Nixon. These activities including hiring burglars to break in to the Democrats’ headquarters, photograph documents there, and install “bugs” (listening devices) on phones.

The Break-Ins

In May of 1972, men working in Nixon’s re-election campaign broke into the Democratic National Committee (DNC) Headquarters in the Watergate office-apartment complex in Washington, DC. About three weeks later, burglars went back to the DNC to repair some of the phone taps. The security guard, seeing that the doors had been tampered with, called the police. The five burglars, wearing business suits, blue surgical gloves, and surrounded by electronic equipment, were caught in the act and arrested at 2:30 a.m. Among the burglars’ belongings were found crisp, sequentially-numbered $100 dollar bills and an address book containing the contact information for some members of CREEP.

Nixon’s closest advisors met to discuss how to distance the President from this criminal activity. They knew that any investigation of the Watergate burglary would lead to disclosure of other illegal operations that had been carried out by Nixon supporters. These illegal operations included bribery, obstruction of justice, destruction of evidence, use of the CIA and FBI for political purposes, illegal campaign contributions, and others. An FBI study established that the Watergate break-in was part of a massive campaign of political spying and sabotage, but there was little press coverage of the Watergate investigation between June and November. In November, President Nixon won a landslide re-election victory.

Investigations

In January, 1973, five of the Watergate burglars pled guilty, and two Nixon aides were convicted of conspiracy, burglary, and wiretapping. Within the next few months, at least three separate investigations of the Watergate incident were conducted.

The White House issued a statement that the President had no prior knowledge of the break-in. Nixon himself maintained he knew nothing of a cover-up. But the investigation began to show otherwise. White House Counsel John Dean told investigators that he had had at least thirty-five discussions with Nixon about the Watergate cover-up. The President, Dean said, had not taken the appropriate steps to bring guilty parties to justice. Nixon maintained that he knew nothing about a cover-up, saying, “Not only was I unaware of any cover-up, but ... I was unaware of anything to cover up.” It was John Dean’s word against the President’s.

The White House stated that it would cooperate with the investigation, but Nixon refused to testify before the Senate committee or to turn over documents it had requested.
Executive Privilege

Nixon claimed that executive privilege guaranteed him confidentiality. Executive privilege is not mentioned in the Constitution, but Presidents since George Washington have maintained that the separation of powers doctrine gives them the right to keep certain information secret.

Then came a stunning revelation. The Senate Committee learned that Nixon had a secret, voice-activated recording system in each of his offices. Every conversation in these offices since 1971 had been recorded. Both the Senate committee and Special Prosecutor asked Nixon for the audio tapes, but Nixon refused to hand them over. He argued that they also were protected by executive privilege. The battle for the tapes continued for the next year between investigators and President Nixon. In October, Nixon began to hand over typed transcripts of parts of some tapes.

Impeachment Inquiry

In February 1974 the House of Representatives began an impeachment inquiry. By the end of April, Nixon still refused to release the tapes themselves, but announced in a televised address that he would release more edited transcripts.

Impeachment hearings began before the House Judiciary Committee in May. On July 24, the Supreme Court ordered Nixon to make the tapes available. In United States v. Nixon, the unanimous opinion of the Court was that, while executive privilege was an important and legitimate principle, “the generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial.”

Nixon’s impeachment by the House and conviction by the Senate were assured. In August, Nixon released what came to be known as the “Smoking Gun” tape, which proved that Nixon had participated in a cover-up of the Watergate burglary and other illegal activities at least since June 23, 1972—six days after the burglary. Nixon resigned on August 9, 1974, making Gerald Ford the thirty-eighth President.

Among the Watergate casualties were forty government officials indicted or jailed, a presidency that ended in disgrace, and a far-reaching loss of trust by the American people in their President.

However, the Watergate scandal and investigations also demonstrated the importance of a free press, and the Founders’ wisdom in setting up the complex system of checks and balances. Americans’ commitment to the rule of law ensures that that no one, not even the President, is above the law.

Critical Thinking Questions

1. What were the Watergate burglaries and what was their purpose?
2. What was the Watergate Scandal?
3. Why was the disclosure that Nixon recorded all his conversations so important to the investigation?
4. What is executive privilege? How did the Supreme Court rule concerning Nixon’s assertions of executive privilege?
5. To what extent did the Constitutional systems of separation of powers and checks and balances function appropriately in the case of Richard Nixon?
The term “executive privilege” is not mentioned in the Constitution. However, it has long been recognized that, in order for the President to get honest advice from his staff, they must be able to speak freely and in confidence. Therefore, according to the doctrine, the President must have the power to keep information secret.

Directions: Read the following examples of past Presidents’ efforts to keep certain information confidential. Discuss each situation with your group and answer the question below.

Was the President’s effort to keep the information secret consistent with his constitutional duty to “take care that the laws be faithfully executed”?

1. George Washington (1796)—Washington refused to provide the House of Representatives with information it requested regarding Jay’s Treaty. Washington’s reasoning was that only the Senate has a constitutional role in the treaty process. Washington provided the documents to the Senate but not the House.

2. Thomas Jefferson (1807)—When former Vice President Aaron Burr was tried for treason, he asked the court to require Jefferson to submit private letters that Burr believed would help his case. Jefferson at first refused, saying that release of the private letters would threaten public safety. Chief Justice John Marshall ruled that the Sixth Amendment requires that criminal defendants have access to such evidence, and that it was the Court’s job to determine whether there was any public danger involved. Jefferson complied with Marshall’s order.

3. Dwight D. Eisenhower (1954)—During hearings about the existence of Communists in the military, Eisenhower refused to turn over documents requested by a Senate committee and instructed all members of the Defense Department to refuse to discuss confidential matters with Sen. Joseph McCarthy’s committee. Eisenhower stated, “Any man who testifies as to the advice he gave me won’t be working for me that night.” The principle was first called “executive privilege” during Eisenhower’s term and was expanded in scope to apply to not only the President and his top advisers, but also anyone in the offices that make up the executive branch.
4. **Barack Obama (2009)**—A Virginia couple with hopes to win roles on a reality show were able to enter a state dinner at the White House even though they were not on the guest list. The two party crashers shook hands with the President and were photographed with him and the Vice President. Congress called the White House Social Secretary to testify about security processes. Obama claimed the Secretary would not testify and that she did not have to under the doctrine of executive privilege.

5. **Richard Nixon**

   Year:

   Information requested:

   Nixon’s response:

   Other Presidents who invoked the principle of executive privilege include Jackson, Taft, Franklin D. Roosevelt, Truman, Kennedy, Clinton, and George W. Bush.

   After considering these historical situations, work with your group to compose a rule that defines in what cases the use of executive privilege is consistent with the Constitution.
“LISTEN ARE YOU GOING TO BE LOYAL TO ME OR TO THAT *%$ CONSTITUTION!” —A 1974 Herblock Cartoon, copyright by The Herb Block Foundation

“How Can They Say He Hasn’t Faithfully Executed The Laws?” —A 1974 Herblock Cartoon, copyright by The Herb Block Foundation
"RESIGNATION" — A 1974 Herblock Cartoon, copyright by The Herb Block Foundation
In the highly charged partisan politics of the 1990s, President Bill Clinton's personal indiscretions led to the second impeachment trial in our history. Independent Counsel Kenneth Starr was investigating Clinton’s pre-presidential financial dealings. In a separate case, Clinton was being sued by Paula Jones for sexual harassment. Jones called a young White House intern named Monica Lewinsky who had been having a relationship with the President to give testimony. Clinton denied the Lewinsky affair under oath in his deposition in the Jones case. This denial caught Starr’s attention, who suspected the President had committed perjury and obstructed justice. Starr assembled a grand jury and issued dozens of subpoenas, and eventually offered Lewinsky immunity in return for her testimony. When Clinton testified for Starr’s grand jury, he gave evasive answers. He ultimately admitted the Lewinsky affair to the American people that night. The House of Representatives impeached Clinton in 1998 on strict party lines, but in the Senate trial, Republicans fell far short of the two-thirds majority needed to convict.

Objectives
Students will:
- Understand the events that led to the impeachment trial of President Bill Clinton.
- Understand arguments made in Clinton’s defense and those made by his accusers.
- Assess whether Clinton was guilty of “high Crimes and Misdemeanors.”

Critical Engagement
Question
Was Bill Clinton guilty of committing “high Crimes and Misdemeanors” as a result of his perjury in a civil lawsuit?

Materials
- Handout A: The Impeachment of Bill Clinton
- Handout B: Glossary Cards
- Handout C: Glossary
- Handout D: Lickert Scale Signs

Background/Homework
A. Have students read Handout A: The Impeachment of Bill Clinton and answer the questions.
B. Make several sets of the Glossary Cards. Give each student one term. Next class, have students explain the relevance of the term to Clinton’s impeachment.

Warm-Up [20 minutes]
A. Allow students who studied each term to discuss their definitions in pairs or trios.
B. Then have each pair/trio present their information to the class. Pairs/trios should share 1) the definition and 2) the significance of the term to understanding the essay.

C. Have students fill in both columns of Handout C: Glossary as you work.

D. Follow-up by discussing the critical thinking questions at the end of Handout A.

E. Ask students to write on their own paper a one sentence answer to the following question: Why was President Bill Clinton impeached?

**Activity [20 minutes]**

A. Post the two signs on Handout D: Lickert Scale Signs at opposite sides of the room. Direct students to stand up and take a position relative to the two signs.

B. Once students are in position, call them one by one to form new groups of three. Each group should contain one person who was closer to “constitutional reasons,” one who was closer to “political reasons,” and one who was closer to the middle.

C. Have students work in groups with the undecided student listening to the other two present their best arguments.

D. After ten or fifteen minutes, ask for a group to volunteer to present their arguments in a “fishbowl” at the front of the room.

**Wrap-Up [10 minutes]**

After one or two groups have presented, reconvene the class and ask:
- Did any “undecided” students come to a decision?
- Would anyone have changed their position on the scale? Why?

**Homework**

Have students write a paragraph explaining whether they believe Clinton was impeached for constitutional or political reasons.

**Extensions**

Some people say that Independent Counsel Kenneth Starr exerted far more energy in his pursuit of Clinton’s shortcomings than was justified. Have students conduct additional research and take a position on this claim, for example at [www.washingtonpost.com/wp-srv/politics/special/clinton/players/starr.htm](http://www.washingtonpost.com/wp-srv/politics/special/clinton/players/starr.htm)
The Impeachment of Bill Clinton

William Jefferson Clinton, elected President in 1992, became the most investigated President in US history due to a combination of his personal flaws and the bitter partisanship that dominated Washington, DC.

Clinton's political opponents alleged that Clinton had participated in dishonest financial dealings before he became President. In August of 1994, Republican Kenneth W. Starr was appointed independent counsel to investigate the Whitewater land development questions. Over the next four years, Starr's investigation led to impeachment of the President on charges completely unrelated to land development deals.

**Paula Jones**

In 1994, former Arkansas state employee Paula Jones sued President Clinton for sexual harassment as a result of a 1991 encounter. The judge allowed Jones' lawyers to look into any facts which might show that Clinton was a sexual harasser. Paula Jones’ lawyers soon heard from Linda Tripp, a former White House employee.

Tripp had befriended an unpaid intern named Monica Lewinsky. Lewinsky, then age 22, claimed that she had had a sexual affair with Clinton beginning in November, 1995. She described encounters that took place in the Oval Office. Without telling Lewinsky she was doing so, Tripp began to record their conversations in late September, 1997.

Throughout this time, Lewinsky maintained contact with the President. Wanted to return to work in the White House. President Clinton asked an adviser to find a job for Lewinsky in New York.

Paula Jones’s lawyers, trying to establish a pattern of Clinton’s sexual misconduct, called Tripp, Lewinsky, and others to testify. In January of 1998, Lewinsky signed an affidavit in the Jones investigation, denying the affair.

At this time, Tripp gave Starr recordings of her conversations with Lewinsky. She also met Lewinsky while wearing a wire for the purpose of recording their conversations.

Starr, unable to prove any wrongdoing on Clinton’s part related to financial dealings, became interested in the sexual harassment case. That month, Tripp helped Starr’s investigators lure Lewinsky to a Washington hotel where she was questioned for eleven hours regarding her relationship with Clinton.

**Clinton’s Deposition**

Clinton gave his pretrial deposition for the Jones lawsuit in January. He lied under oath when he said that he could not remember being alone with Lewinsky at the White House and when he stated, “I have never had sexual relations with Monica Lewinsky. I’ve never had an affair with her.”

Several days later, Clinton said at a press conference, “I did not have sexual relations with that woman, Ms. Lewinsky.” The denial would become one of the most infamous sound-bytes of his Presidency.

In April, the Jones lawsuit was dismissed. The judge ruled that Clinton’s conduct did not meet the legal definition necessary for a sexual harassment lawsuit. (Jones later agreed to drop her appeal in exchange for an $850,000 settlement.) Starr, however, continued his investigation into possible perjury and obstruction of justice by the President.
Kenneth Starr

Starr had empaneled a grand jury. He called White House staff, Clinton’s friends and advisors, Secret Service agents, and even Lewinsky’s mother to testify. He subpoenaed records from a bookstore where Lewinsky shopped. Starr demanded and received a sample of the President’s DNA.

In July, Starr granted full immunity to Lewinsky in return for her cooperation in his investigation. She admitted that she had lied when denying her relationship with the President. She turned over to Starr a dress with a stain later determined to provide proof of sexual contact with Clinton.

In August, Clinton appeared before the same grand jury, testifying from the White House through a live closed-circuit television connection. He repeatedly refused to answer specific questions about his actions with Lewinsky.

That night, the President made a televised address to the American people. He admitted an inappropriate relationship with Lewinsky and apologized to his family and to the nation for his misleading statements about the affair.

In September 1998, Kenneth Starr delivered to the House Judiciary Committee the report of his four-year investigation which he said provided proof of eleven impeachable offences. The Starr Report was published in its entirety (accompanied by warnings about graphic content) in newspapers across the US on September 11, 1998. Clinton’s approval ratings went up throughout this time.

Impeachment

The House of Representatives approved two articles of impeachment, all dealing with the President’s lies regarding his relationship with Monica Lewinsky. In the trial before the Senate that began in January, 1999, House prosecutors stated that Clinton was guilty of “willful, premeditated, deliberate corruption of the nation’s system of justice through perjury and obstruction of justice.” The President’s lawyers responded, “The House Republicans’ case ends as it began, an unsubstantiated, circumstantial case that does not meet the constitutional standard to remove the President from office.”

The President’s job approval rating was over seventy percent, and informal head counts in the Senate indicated that the required two-thirds vote to convict could not be achieved. Both sides wanted to bring the impeachment proceeding to a quick end. One month later, forty-five Senators voted that the President was guilty of perjury, and fifty found him guilty of obstruction of justice. Since fewer than sixty seven Senators found him guilty, President Clinton would continue to serve out his second term which ended in January, 2001.

Critical Thinking Questions

1. Who was Paula Jones and why did she subpoena Monica Lewinsky and Linda Tripp?
2. Why did Kenneth Starr suspect Clinton was guilty of perjury and obstruction of justice?
3. In what situations did President Clinton give misleading testimony denying his sexual relationship with Monica Lewinsky?
4. What was the issue at the heart of the impeachment charges against President Clinton?
5. Why do you think Clinton’s approval ratings went up during the impeachment process?
6. Do you believe that President Clinton was guilty of “high Crimes or Misdemeanors”? Why or why not?
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Directions: Define each term and explain how it helps you understand the investigation and impeachment of President Clinton.

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President Bill Clinton was investigated and eventually impeached for purely political reasons.

President Bill Clinton was investigated and eventually impeached for purely constitutional reasons.
**Presidents and the Transfer of Power**

**Activity** [20 minutes]

A. Distribute *Constitutional Connection: Presidents and the Transfer of Power* on the following page and *Appendix B: The United States Constitution*.

B. Divide students into small groups and have them review the selected clauses of the Constitution.

C. Ask students to discuss the questions in their groups, and then reconvene for large group discussion.

D. To wrap up, ask students:
   1. How do each of these constitutional provisions contribute to the peaceful transfer of power?
   2. Does the existence of an amendment process itself contribute to the peaceful transfer of power? Why?
   3. In US history, there was one presidential election (1860) where the transfer of power was not peaceful. What was markedly different in that election?
I. **ELECTING THE PRESIDENT: ARTICLE II, SECTION 1, CLAUSE 3; MODIFIED BY THE TWELFTH AMENDMENT**

1. Compare the process for electing a President established in Article II, Section 1, Clause 3 with the process as it was changed by the Twelfth Amendment.

2. Why do you think these changes reinforced the practice of naming party “tickets”?

II. **UNEXPECTED TRANSFER OF POWER: ARTICLE II, SECTION 1, CLAUSE 6; MODIFIED BY THE TWENTY-FIFTH AMENDMENT**

1. Review the process for an unexpected transfer of power established in Article II, Section 1, Clause 6. What happens if the President dies, resigns, or becomes otherwise incapable of completing his or her term?

2. How did the Twenty-Fifth Amendment change the process for handling an unexpected transfer of power?

III. **OATH OF OFFICE: ARTICLE II, SECTION 1, CLAUSE 8**

Read the Oath of Office listed in Article II, Section 1, Clause 8. How might the Oath of Office contribute to a peaceful transfer of power?

IV. **TWENTY-SECOND AMENDMENT**

1. What limit did the Twenty-Second Amendment place on individuals who want to run for the Presidency?

2. What are arguments in favor of limiting the President to two terms? What are the arguments against? Can you think of any reason that the Founders placed no such limit in the Constitution in 1787?
At a time when nearly everywhere regime change occurred as a result of death, murder, war, intrigue, or rebellion, the US Constitution’s 1789 framework for the peaceful transfer of presidential power stood out as truly revolutionary. Even England, which passed along to Americans the most orderly model of executive succession, had witnessed since 1649 the beheading of King Charles I, the forced abdication of Richard Cromwell, and the ouster of James II. There and nearly everywhere else, a successful sovereign was one who served until a natural death. Breaking with the past, Americans devised a system in which the people were sovereign and their election at regular intervals of executive office holders was the norm.

The rules for electing a President laid out by the Constitution’s framers in Article II nonetheless reflected the practices and presumptions of Eighteenth-Century American politics. The Constitution was a creation of states that guarded jealously their ability to act with independence. Each possessed the ability to determine how to select presidential electors equal in number to its two Senators and delegation to the House of Representatives. Because the Founders assumed that electors would frequently favor as candidates individuals from their own states, the Constitution required that each elector cast votes for two individuals eligible for the presidency, one of whom must reside in another state. Each state forwarded a tally of its electoral votes to the Senate, which, if no one individual received the majority, referred the election to the House of Representatives. There Congressmen would vote as members of state delegations, each of which had one vote. The individual to receive support from the majority of state delegations became the President.

This system worked well enough in 1788 and 1792, when electors unanimously selected George Washington to preside over the national government. Although political parties developed during Washington’s administration, he did his best to detach himself from the partisanship of the 1790s and largely succeeded in remaining the sole leader around whom nearly all Americans could unite.

Washington established a tradition of American Chief Executives refusing to stand for election to more than two terms: a practice unchallenged until President Franklin Roosevelt won election to four terms in the 1930s and 1940s but then formalized in 1951 by the Constitution’s Twenty-Second Amendment. It was not only that Washington, by stepping down, avoided inadvertently
establishing a precedent for Presidents serving until the ends of their lives (for he would die in 1799) but by removing himself from consideration, he initiated an unbroken string of partisan presidential contests not envisioned by the Constitution’s framers.

The elections of 1796 and 1800 yielded consequences that reflected the new developments in the political landscape. Increasingly organized and nationalized, the Federalist and Republican leadership attempted to make clear to supporters throughout the nation the names of their candidates for both President and Vice President. Federalists supported John Adams and Thomas Pinckney; Republicans supported Thomas Jefferson and Aaron Burr. After a heated campaign, Adams won 71 votes in the Electoral College to Jefferson’s 68. Since any candidate who could gain at least 70 votes became the President, Adams won. But Jefferson—and not Pinckney—came in second, so Adams’s main opponent became his Vice President. Adams’s sole term as President was marked by political strife and diplomatic challenges. Each side believed that the election of 1800 would determine the success or failure of the American experiment, so party discipline increased in that election. This discipline, however, resulted in Thomas Jefferson and Aaron Burr receiving an equal number of electoral votes. Therefore the election was decided by the Federalist House of Representatives. Only after thirty-five deadlocked ballots did some Federalists change their votes to Jefferson, who took office in 1801.

Jefferson spearheaded a move to ratify the Constitution’s Twelfth Amendment, which provided that electors would cast one vote each for President and Vice President. Enacted in time for the election of 1804, the change not only precluded repetition of a tie between the intended President and Vice President but also reinforced the practice of naming partisan “tickets.”

Two national parties dominated American politics until the 1850s, when divisions over issues such as slavery caused these parties to splinter. In 1856, a united Democratic party put forth as its presidential candidate James Buchanan, whose electoral votes—nearly all of which came from southern and Middle Atlantic states—surpassed those of the candidates nominated by the Republican and “Know-Nothing” Parties. In 1860 the tables turned. Southerners divided their votes among three candidates while Abraham Lincoln, of the new, northern-based Republican Party, took office with sixty percent of the electoral vote. Yet Lincoln, who was not even on the ballot in ten southern states, received only forty percent of popular vote. Since his party promised to halt the expansion of slavery, southerners feared that they had become a permanent minority. The result was secession—and Civil War. This was the only time in American history that the transfer of power was not peaceful.

The 1860 election constituted the worst, but not the last, instance in which the system established under the Twelfth Amendment failed to yield a result around which nearly all Americans could coalesce. Both the elections of 1876 and 2000, for example, hinged on the electoral votes of states that yielded disputed results.

The final major constitutional innovation relating to the transfer of power deals less with presidential elections, however, and more with presidential succession. While the Twenty-Second Amendment limited the number of times an individual could
run for the presidency, the Twenty-Fifth Amendment—ratified in 1967 after the 1963 assassination of President John F. Kennedy—clarified procedures when the President died in office, resigned, or was incapacitated. First, the Amendment established definitively that, should the President die or resign, the Vice President would immediately take office as President. Second, it held that a Vice President permanently elevated to the presidency could nominate a new Vice President, who would take office after the approval of the majority of both the House and Senate. Third, the Amendment established a mechanism for the President either to declare himself temporarily incapable of performing his duties or for the Vice President and the majority of the Cabinet to issue such a declaration.

The Twenty-Fifth Amendment was first invoked in 1973 when Gerald Ford replaced Spiro Agnew who had resigned as Nixon’s Vice President. The Amendment served the nation again the following year, when the Watergate scandal prompted Nixon to resign and Ford assumed the presidency. Ford, who became the first President never to have been elected as either President or Vice President, then nominated to serve as Vice President Nelson Rockefeller, whose appointment was confirmed by majorities in both houses of Congress. More recently, the Amendment has been invoked in instances when the Vice President temporarily acted as chief executive while the President underwent medical procedures requiring anesthesia.

In fulfillment of the Founders’ vision, the transfer of executive power within the United States government has been orderly and generally peaceful for more than two centuries. In a world that continues to see regimes toppled by coups, invasions, and armed uprisings, this is no small accomplishment. It owes its success to not only Americans’ fidelity to the rules and procedures laid down in the Constitution but also their willingness to use the amendment process to adapt those rules and procedures to changing times and circumstances.

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Overview

The 1800 election was a major test of whether the young republic and its Constitution would live beyond its Founding generation. It was the first election in which two competing political parties engaged in an extended campaign against one another to win the presidency. This challenge was made more difficult by the fact that the new Constitution’s system for electing a President was not designed with political parties in mind. In fact, the Constitution’s process for electing the President had been designed to limit the influence of political parties. In the election of 1796, this method of electing the President led to the potentially dangerous situation of joining a President with a Vice President from the opposing party. In the election of 1800, this method of electing the President led to a tie, which was only settled after a long battle in the House of Representatives. The republic endured the election of 1800, but it was clear to most that the constitutional process for electing the President needed to be amended. To do so, Congress passed the Twelfth Amendment in 1803; the states ratified the amendment in 1804.

Objectives

Students will:

- Understand the process originally established in the Constitution for electing a President.
- Recognize ways in which the original electoral process failed when political parties took a role in selecting candidates.
- Evaluate the role of political parties in sorting presidential candidates.

Critical Engagement Question

What is gained and what is lost by giving political parties a role in electing our President?

Materials

- Handout A: The Election of 1800
- Handout B: Sorting the Candidates

Background/Homework

A. Have students read Handout A: The Election of 1800 and answer the questions.
B. Have them interview a parent or other adult. Students should ask about the purpose of political parties, how successful they are at selecting better candidates, and what specific successes or weaknesses they have.
C. You may also want to have students do an activity on the Electoral College from Volume I of Presidents and the Constitution (pg. 118).
Warm-Up [10 minutes]

A. Have students imagine they are electors in a presidential election. On a blank sheet of paper they should write the names of two Americans alive today whom they would like to see as President or Vice President (not including the sitting President). Important: Students may NOT talk or work together.

B. Collect the ballots and assign two students to count them. While the vote-counters are working, ask students to share the names of the individuals they listed on their ballots.

C. When your vote-counters are done, have them write the top five vote-getters, along with the number of votes each received, on the board. Explain to students that the number of votes necessary to win is half the number of students in the classroom, plus one.

D. Ask students to think about the outcome of an election that has no prior sorting process where potential candidates are evaluated.
   - Was the process democratic?
   - Was the outcome desirable?
   - Why is it a good idea to have a sorting process?

Activity [30 minutes]

A. Have students work in small groups. Distribute Handout B: Sorting the Candidates.

B. First, have students read the list of desired outcomes on Handout B. Students should add any desired outcomes they think should have been included, and cross out any listed outcomes they think are unimportant.

C. Students should then rank the desired outcomes from most important to least important.

D. Finally, ask students to recall their interviews and their own knowledge of political parties in order to evaluate our current two major-party system. How well does it accomplish all of those desired outcomes? Have a representative of each group share their thinking.

Wrap-Up [10 minutes]

Asking students to recall their homework interviews (if they conducted one) or their own knowledge, have them share their understandings of the US political party system. As a large group, discuss the following questions:
   - Is the two-party system the best way to identify/sort candidates?
   - What are advantages of a two-party system? Disadvantages?
   - Is it a strength or a weakness of our constitutional system that such an important task is performed by political parties—institutions that are not mentioned in the Constitution?

Homework

Ask students to follow up with the person they interviewed for homework. They should share knowledge gained in the lesson and ask their interviewee some of the class discussion questions.

Extensions

Have students research the election of 1824—the first election after the ratification of the Twelfth Amendment to be settled by the House of Representatives. Ask them to write a brief explanation of the reasons that election had to be settled by the House.
When drafting the Constitution, the delegates to the Constitutional Convention struggled to define the office of the Presidency. In creating a new government that would be powerful but not tyrannical, the Founders paid special attention to the process by which the President would be elected. Some feared that tyranny was likely to emerge from a President who grew too powerful. Generally, these delegates wanted the President to be selected by a few men with extensive political experience, like the Congress, rather than by the people. They feared the people might be easily deceived by a demagogue (a calculating politician who seeks election by telling people what they want to hear).

Others feared that tyranny was more likely to come from the legislature. Generally, these delegates saw the President as a potentially powerful check on legislative abuse. They fought against the idea of having the legislature elect the President.

The Electoral College

As an alternative to popular election and election by the legislature, the delegates agreed to create a body of electors who would select the President. The Electoral College would allow a small number of leading citizens, chosen by the people of their state on the basis of their special knowledge of the candidates, wisdom, and experience, to elect the President. The Founders concluded that this process would make it most likely that the best candidates were elected, and not simply those candidates who appealed to narrow personal or partisan interests.

Political Parties and the Electoral Process

The system was not without its flaws. Two parts of the process were particularly troublesome. First, according to the Constitution, each elector was to vote for two individuals for President. There were no votes for Vice President; instead, the runner-up would be named Vice President. The problem with this process was made clear in the election of 1796.

This election produced a potentially dangerous outcome. A President from one party (John Adams from the Federalist Party) was elected alongside a Vice President from another party (Thomas Jefferson from the Republican Party). Though Adams and Jefferson respected each other, it was clear to members of both parties that it was not wise to have a President and Vice President of opposing parties. Therefore, in campaigning for the next election in 1800, both parties took care to name a “ticket” (a team of their candidate for President and their candidate for Vice President).

This change revealed a second way in which the electoral process established in the Constitution could not work with political parties. In the process as designed, electors would make independent decisions about which candidates to write into their ballots. With the appearance of political parties and presidential tickets, however, electors were expected to be “faithful” to their party’s ticket, or to follow the party line. This is exactly what happened in the election of 1800. The Republican Party candidate, Thomas Jefferson, was named on the ballot of all...
Republican electors. Jefferson’s Vice Presidential candidate, Aaron Burr, was also named on the ballots of all Republican electors. In other words, the election of 1800 had ended in a tie.

The Deadlock of 1800
The fact that it was a tie between candidates the Republican Party had selected for President and Vice President did not matter under the Constitution. All that mattered was that the Electoral College did not produce a winner. According to the Constitution, it was up to the House of Representatives to resolve this tie with each state having one vote.

Many in the Federalist Party despised Thomas Jefferson, and they did their best to prevent Jefferson from taking the Presidency. For a full week after electoral ballots were counted, the House of Representatives took vote after vote to settle the election. Through thirty-five rounds of voting, the House found itself in a deadlock. On the thirty-sixth ballot, a handful of Federalists who had been casting ballots against Jefferson decided to abstain, leaving Jefferson ahead on ten ballots, to Burr’s four, with two states abstaining. Jefferson was finally named President, and Aaron Burr Vice President, just as the Republican Party had intended.

Keeping the Peace
After this hotly contested election battle was concluded, President Jefferson made an effort to reconcile the opposing sides. In his Inaugural Address, he observed the great differences of opinion that divided Federalists from Republicans. But he also noted that “every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all Republicans, we are all Federalists.”

But calls to support the Constitution may begin to sound insincere if the electoral process frequently produces contested election results. To minimize the danger of another deadlock, Congress passed the Twelfth Amendment to the Constitution in 1803; the states ratified the amendment in 1804. This amendment required each elector to cast one vote for President and one vote for Vice President. Since that time, political parties have solidified their role in nominating candidates for President and Vice President.

Devotion to the Constitution and the rule of law despite our political differences are important reasons why Americans are able to peacefully transfer power from one President and one party to another.

Critical Thinking Questions
1. What was the Electoral College designed to do?
2. What was the potential problem with the outcome of the election of 1796? What steps did the emerging political parties take to avoid it in the future?
3. Were the Founders wrong to want to keep the Presidency free of partisan differences? Explain.
4. Though it took a long time to settle the election of 1800, the electoral process did ultimately produce a winner. Do you think it was really necessary to pass the Twelfth Amendment? Why or why not?
The Constitution as originally ratified made no provision for sorting potential candidates for the presidency. This system worked well enough when George Washington was, without question, “first in the hearts of his countrymen.” After our first two elections, however, when Washington refused to run for a third term and several individuals all wanted to become President, selecting the President became more complicated.

**Part One:** Listed below are some reasons for having a candidate sorting process. Read them; add any which might be missing; and then rank them with #1 being the most important and #10 being the least important.

_____ to give the general electorate the widest possible range of choice in candidates

_____ to identify the most experienced candidates

_____ to identify the wisest candidates

_____ to identify the candidates closest to the principles of their party’s platforms

_____ to identify the candidates best able to cooperate with Congress

_____ to identify the candidates best able to cooperate with world leaders

_____ to identify the candidates who want the office most

_____ Other: ________________________________

_____ Other: ________________________________

_____ Other: ________________________________

**Part Two:** How well do political parties accomplish these goals?
The Election of 1860

Overview

The election of 1860 was the only election in our history that did not result in a peaceful transfer of power. As political developments changed the way the Constitution’s compromises on slavery were understood and applied, Americans from both North and South expressed fears about conspiracies to either impose or prohibit slavery throughout the nation. Fearing a loss of power within the Union, many Southerners revisited arguments about the nature of the Constitution. Some argued that the Constitution was a compact among the states, and that interpretation seemed to allow for states to secede, or withdraw from that compact. After the Republican candidate, Abraham Lincoln, was elected President in 1860—without even appearing on the ballot in ten Southern states—Southern states rapidly took action to secede from the Union, and President Lincoln took action to keep the Union together.

Objectives

Students will:

- Understand important developments leading up to the election of 1860 that challenged the Constitution’s original compromises on slavery.
- Analyze why the election of 1860 did not result in a peaceful transfer of power.
- Assess the validity of South Carolina’s justification of secession.

Critical Engagement Question

Why was the transfer of power not peaceful after the election of 1860?

Materials

- Handout A: The Election of 1860
- Handout B: Mock Ballots
- Handout C: Lincoln’s First Inaugural Address
- Handout D: The Right to Leave?
- Handout E: Two Declarations

Background/Homework

Have students read Handout A: The Election of 1860 and answer the questions.

Day One

Warm-Up [ 10 minutes ]

A. As students enter, share with them the following fictitious scenario: Some students have complained to the principal that there is too much homework. The principal has decided that a “Homework Czar” will decide on a school-wide homework policy. The students will elect the Homework Czar.
B. Tell students there will be a secret ballot vote as you distribute Handout B: Mock Ballots. Give boys the ballot with four candidates and girls the ballot with three. Important: Have copies of the two different ballots ready in your hand as you pass them out, and do NOT tell students there are two different ballots.

C. Make a show of counting the ballots. (The actual count is irrelevant.) Announce that the winner, with thirty-nine percent of the vote, is Candidate D. What is important is the fact that the “winning” candidate will not have been on the girls’ ballots, yet his stated intentions will affect them. Allow students to discuss how this process made them feel.

Activity [30 minutes]

A. Connect this exaggerated Homework Czar scenario to the election of 1860 by directing students to the quote in Handout A by a Southern pamphleteer: “[The Republican Party] exists only in the Northern states. ...Where is the security of the South, and what is her position in the Union?”

B. Ask students to consider the following questions as a large group, encouraging them to refer to Handout A for support in their thinking:

- What does the Southern pamphlet author mean by “partisan organization”?
- What does he mean by “exclusively and intensely sectional”?
- Are these complaints justified?
- Are his last two questions justified?

Wrap-Up [10 minutes]

In a mini-lecture, remind students that Lincoln, who was not even on the ballot in ten Southern states, received only forty percent of the popular vote. The two major Democratic candidates split their Party’s votes. Added together, they won eighty-four electoral votes and received forty-seven percent of the popular vote. Since Lincoln’s party promised to halt the expansion of slavery, Southerners feared that they had become a permanent minority. Harking back to the Continental Congress in 1776 declaring that the thirteen colonies were “free and independent states,” South Carolina asserted in its 1860 Declaration of Secession that it would once again become a free and independent state. In his First Inaugural Address, Lincoln outlined his arguments against the constitutionality of secession.

Homework

Have students read and complete Handout C: Lincoln’s First Inaugural Address.

Day Two

Warm-Up [20 minutes]

A. Divide the class into four groups. Give each of the groups one of the scenarios from Handout D: The Right to Leave? Ask groups to role-play their scenarios in their groups and answer the questions that follow.

B. After a few moments, ask one student from each group to share their scenario and responses.

C. Ask students as a whole about when it is acceptable to leave a group. Does it matter if they joined the group voluntarily or were born into the group?
Remind students that our Constitution is, in part, an agreement to form institutions that will perform certain duties. What kinds of agreements have you seen or been part of? Students may suggest: merchant-customer; landlord-tenant; husband-wife; etc.

Finally, ask: Who or what were the parties to the Constitution? What would Lincoln say? What would South Carolina say?

**Activity [20 minutes]**

A. Distribute **Handout E: Two Declarations**. Give students a few moments to skim over the two documents, and then ask the class if they notice any similarities in phrasing.

B. Divide the class into pairs and assign each pair one or more sets of quotations from the Declaration of Independence and South Carolina’s Declaration of Secession.

C. For each set of quotations, students should answer the following questions:

   - What do these two sections have in common?
   - How are they different? How significant are those differences?
   - What main points does the Declaration of Independence make?
   - What main points does the Declaration of Secession make?

D. Ask each pair to share their analysis with the class.

E. Once all sections of the documents have been discussed, ask students if they think South Carolina was justified in using the Declaration of Independence as a model for its Declaration of Secession.

**Wrap-Up [10 minutes]**

To wrap up, discuss the following questions:

   - Whose arguments were more persuasive: Lincoln’s or South Carolina’s?
   - In arguing for/against the legitimacy of secession, both South Carolina and President Lincoln referred to the numerous agreements made between the colonies and, later, the states: the Articles of Association (1774), the Declaration of Independence (1776), the Articles of Confederation (1781), and the Constitution (1789). Does the existence of this series of agreements support or oppose the argument that the Union is perpetual?
   - Who gets to decide whether the Union is perpetual? Why?

**The Issues Endure**

The question of whether states should be able to oppose the federal government’s acts as unconstitutional has been debated in several important documents. Have students summarize the arguments about how states should be able to judge the constitutionality of federal government actions in the following documents: Report and Resolutions of the Hartford Convention; Virginia Resolutions; Kentucky Resolutions; South Carolina Exposition and Protest; South Carolina Ordinance of Nullification. Students should also look for more contemporary resolutions of this nature, passed by New Hampshire and other states in response to proposed national healthcare legislation. These documents can be found at [www.ArticleII.org](http://www.ArticleII.org).
The Constitution created a federal system with a national government of enumerated powers. The states and the people kept the powers not given to the Constitution. But one important question that the Constitution left unanswered was: Could states oppose the national government if they believed it exercised more power than the Constitution granted? If so, how?

Some, including James Madison and Thomas Jefferson, believed states could challenge the federal government. Madison and Jefferson argued in 1798 that the Constitution was a "compact" (a contract or agreement) entered into by the states. Therefore, they argued, states should have power to challenge the constitutionality of acts of Congress. Thirty years later, some Southern states objected to a tariff (a tax on imports) imposed by Congress. Angry citizens in South Carolina began to talk about "nullifying" the law (declaring the law to be without force in South Carolina). Compromises eventually settled the controversy.

**Slavery and the Constitution**

Debates about the Constitution and slavery continued. Northerners resented the three-fifths compromise, which allowed Southern states to count three-fifths of their slave populations for representation in Congress. More troublesome was the Constitution's Fugitive Slave Clause, which said states could not harbor escaped slaves. Many Northern states passed state "personal liberty" laws that interfered with enforcement of federal fugitive slave laws. Finally, Congress banned the importation of slaves as soon as the Constitution allowed in 1808. But by the late 1850s some Southerners were calling for the reopening of the slave trade.

The admission of new states also threatened to upset the balance of power between North and South. The Missouri Compromise of 1820 admitted Missouri as a slave state, Maine as a free state, and drew a line that divided remaining lands for future states. In the Kansas-Nebraska Act of 1854, the doctrine of popular sovereignty turned Kansas into a battleground. Violence between settlers was so common that the territory became known as "Bleeding Kansas."

Supreme Court rulings also stood in the way of compromise. In 1842 the Court ruled that personal liberty laws in Northern states were unconstitutional. This paved the way for a new federal Fugitive Slave Act in 1850, which forced state officials to arrest anyone suspected of being an escaped slave. Northerners were forced to support a practice that many of them found morally wrong. Then, the Court held in *Dred Scott v. Sanford* (1857) that Congress could not prohibit slavery in federal territories. Northerners believed that a Southern minority was going to impose slavery on the unwilling majority. The prospect of civil war was on the horizon.

**The Election of 1860**

A new political party, the Republican Party, was formed in 1854. The Republican Party had two defining features: it opposed slavery, and it was only in the North. These two features prompted Southerners to worry about
their place in the Union. One Southern pamphleteer complained that the Republican Party “exists only in the Northern states, and for the first time in our history a partisan organization, exclusively and intensely sectional, has obtained ascendency in our Government. ...In the South it has no practical existence. ...The bond of brotherhood between the North and the South, so far as political parties are concerned, is broken. Where is the security of the South, and what is her position in the Union? If history furnishes any lessons of wisdom or experience, she must rely upon herself for protection and safety.”

Southerners hardened their position in response to the perceived threat of the Republican Party, causing a split in the Democratic Party. Democrats split their votes and Abraham Lincoln won the election of 1860 with 180 (out of 303) electoral votes. He won barely forty percent of the popular vote. He was not on the ballot in ten Southern states.

**Secession of South Carolina**

Citing arguments that the Constitution was a compact among the states, Southern states took steps to withdraw from that compact. South Carolina’s Declaration of Secession cited the Declaration of Independence, stating that “whenever any form of government becomes destructive of the ends for which it was established, it is the right of the people to alter or abolish it, and to institute a new government.”

South Carolina believed secession was justified and each state could judge on its own whether the federal government had failed to live up to its purposes, but Lincoln believed otherwise. He believed the union of states created by the Constitution was perpetual. He asked in his First Inaugural Address, “If the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate it—break it, so to speak—but does it not require all to lawfully rescind it?” A portion of the people, he said, could not destroy what the whole people had created.

Claiming that the Northern states had repeatedly tried to deny the Southern states their constitutional right to slavery, South Carolina declared that their relationship to the Union was dissolved. Before Lincoln was inaugurated as President, seven Southern states seceded from the Union. These states created their own nation, the Confederate States of America (CSA). Lincoln, however, never acknowledged the CSA as a nation, instead considering the seceded states to be in rebellion.

In the growing strife, Confederate troops fired on Ft. Sumter, a federal fort in South Carolina. Four more states seceded. The transfer of power was not peaceful, and the nation divided was now at war against itself.

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**Critical thinking questions**

1. List two compromises on slavery that were written into the Constitution.
2. Why do you think the expansion of the United States westward and the addition of new states made it difficult for the Constitution’s compromises about slavery to continue?
3. Why did northerners fear the Supreme Court’s rulings on slavery?
4. Do you think the Republican Party was a threat to the South? Why or why not?
5. Why did southerners believe that they could secede from the Union? Why did Lincoln believe they could not?
## Ballot: Homework Czar

<table>
<thead>
<tr>
<th>Candidate A</th>
<th>Wants each class to decide for itself whether all students do their own homework or whether to select a small handful of students to do all the homework for the class.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Candidate B</td>
<td>Wants the students from the National Honor Society to do all the homework for the entire school.</td>
</tr>
<tr>
<td>Candidate C</td>
<td>Thinks the idea of a Homework Czar is divisive and just wants teachers to keep doing whatever they have been doing.</td>
</tr>
<tr>
<td>Candidate D</td>
<td>Wants all the girls in the school to do all assigned homework so that boys won’t have to do any.</td>
</tr>
</tbody>
</table>
I hold that in contemplation of universal law and of the Constitution the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. ...Continue to execute all the express provisions of our National Constitution, and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself.

...If the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate it—break it, so to speak—but does it not require all to lawfully rescind it?

The Union is much older than the Constitution. It was formed, in fact, by the Articles of Association [by the First Continental Congress] in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured, and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778. And finally, in 1787, one of the declared objects for ordaining and establishing the Constitution was “to form a more perfect Union.”

But if destruction of the Union by one or by a part only of the States be lawfully possible, the Union is less perfect than before the Constitution, having lost the vital element of perpetuity. ...It follows from these views that no State upon its own mere motion can lawfully get out of the Union; that resolves and ordinances to that effect are legally void, and that acts of violence within any State or States against the authority of the United States are insurrectionary or revolutionary, according to circumstances.

[Has] any right plainly written in the Constitution ... been denied? I think not. ...Think, if you can, of a single instance in which a plainly written provision of the Constitution has ever been denied. ...May Congress prohibit slavery in the Territories? The Constitution does not expressly say. Must Congress protect slavery in the Territories? The Constitution does not expressly say...

In your hands, my dissatisfied fellow-countrymen, and not in mine, is the momentous issue of civil war. The Government will not assail you. You can have no conflict without being yourselves the aggressors. You have no oath registered in heaven to destroy the Government, while I shall have the most solemn one to “preserve, protect, and defend” it.

1. What are Lincoln's arguments against secession?

2. Which do you find most persuasive? Least persuasive? Why?
**The Right to Leave?**

**Scenario 1**
You and a group of friends have arranged to rent a special room at a restaurant to throw a birthday party for another friend. Each of you has agreed to pay a share of the cost.

Would you be justified in later refusing to pay your share of the cost if:

1. You do not like the restaurant the group selects?
2. You discover that the friend for whom you are throwing the party has secretly been saying bad things about you behind your back?
3. You learn that some of your friends plan to smuggle in alcohol?
4. You would never be justified in refusing.

**Scenario 2**
You voluntarily joined your school’s track team and have been training to be part of the relay team. The state championship is a week away.

Would you be justified in quitting the track team if:

1. You get bored by training?
2. You develop a mild injury while training that your doctor says might become a major injury if you continue to train and then compete?
3. You discover that two other members of your team have been using steroids?
4. You would never be justified in quitting.
The Right to Leave? (cont.)

Scenario 3

There have been several thefts and acts of vandalism in your neighborhood. Your neighborhood is far away from the nearest police station. Families in the neighborhood decide to hire a private security firm together, with every family paying a share of the cost.

Would you be justified in leaving this neighborhood association, ceasing to pay your dues, if:

1. You don’t like the color of the security firm’s uniforms?
2. You discover that the crime problem was really greater in another part of the town—not the part in which you live?
3. You strongly suspect that several members of the security firm have been stealing property?
4. You would never be justified in leaving the association.

Scenario 4

You have just turned 18 years old. You have been arguing with your family a lot. You move away to college and are wondering whether to end contact with your family.

Would you be justified in ending contact with your family if:

1. Your family asked you to begin paying your own cell phone bill?
2. Your family had lost most of your college fund as a result of bad financial decisions?
3. Your family had been physically abusive?
4. You would never be justified in ending contact with them.
### TWO DECLARATIONS

**Directions:** Read the excerpts from the Declaration of Independence and South Carolina's Declaration of Secession, and discuss the questions that follow.

<table>
<thead>
<tr>
<th>Declaration of Independence (1776)</th>
<th>Declaration of Secession (1860)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 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.</td>
<td>And now the State of South Carolina having resumed her separate and equal place among nations, deems it due to herself, to the remaining United States of America, and to the nations of the world, that she should declare the immediate causes which have led to this act.</td>
</tr>
<tr>
<td>✶ What was the purpose of this document?</td>
<td>✶ What was the purpose of this document?</td>
</tr>
<tr>
<td>2 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.</td>
<td>We maintain that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part of the agreement, entirely releases the obligation of the other; and that where no arbiter is provided, each party is remitted to his own judgment to determine the fact of failure, with all its consequences.</td>
</tr>
<tr>
<td>✶ According to this document, when are a people justified in getting rid of one government and starting another one?</td>
<td>✶ According to this document, who decides if one party in a contract has broken the terms?</td>
</tr>
</tbody>
</table>
### Declaration of Independence (1776)

3 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. [The Declaration here lists twenty-seven grievances against the King.]

What was the purpose of this section of the Declaration of Independence?

4 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.

What is the purpose of this section of the document?

### Declaration of Secession (1860)

We affirm that these ends for which this Government was instituted [described in the Preamble] have been defeated, and the Government itself has been made destructive of them by the action of the non-slaveholding States. Those States have assumed the right of deciding upon the propriety of our domestic institutions; and have denied the rights of property established in fifteen of the States and recognized by the Constitution; they have denounced as sinful the institution of slavery; they have permitted open establishment among them of societies, whose avowed object is to disturb the peace and to eloin [take away] the property of the citizens of other States. They have encouraged and assisted thousands of our slaves to leave their homes; and those who remain, have been incited by emissaries, books and pictures to servile insurrection.

What was the purpose of this section of the Declaration of Secession?

On the 4th day of March next, [the Republican] party will take possession of the Government.

...The guaranties of the Constitution will then no longer exist; the equal rights of the States will be lost. The slaveholding States will no longer have the power of self-government, or self-protection, and the Federal Government will have become their enemy. Sectional interest and animosity will deepen the irritation....

What time period does this section of the document reference?
## Two Declarations (cont.)

<table>
<thead>
<tr>
<th>Declaration of Independence (1776)</th>
<th>Declaration of Secession (1860)</th>
</tr>
</thead>
<tbody>
<tr>
<td>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 the 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 do all other acts and things which independent states may of right do.</td>
<td>We, therefore, the People of South Carolina, by our delegates in Convention assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, have solemnly declared that the Union heretofore existing between this State and the other States of North America, is dissolved, and that the State of South Carolina has resumed her position among the nations of the world, as a separate and independent State; with 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.</td>
</tr>
</tbody>
</table>

What kind of association have the United States formed with this Declaration? What status does South Carolina claim to be reverting back to with this Declaration?
Overview

Shortly before Richard Nixon was re-elected President in 1972, individuals connected with his re-election campaign were arrested while breaking into Democratic Party Headquarters at the Watergate office complex in Washington DC. Nixon was re-elected by an overwhelming margin, but questions surrounding his knowledge of the break-in, and his attempt to cover it up would not go away. During these investigations, Nixon’s Vice President, Spiro Agnew, was forced to resign on unrelated corruption charges. According to the Twenty-Fifth Amendment, the President must nominate a new Vice President when that office becomes vacant, and both houses of Congress must approve that Vice President. Because few in Congress believed that Nixon’s presidency would survive, key members of Congress told Nixon to nominate as Vice President a distinguished Republican Member of Congress, Gerald Ford. After Nixon’s resignation, Ford was sworn in as President and made the extremely unpopular decision of issuing Nixon a full pardon “for all offences against the United States.”

Objectives

Students will:

- Understand the sequence of events by which Gerald Ford became President.
- Assess the legitimacy of Gerald Ford’s presidency.
- Evaluate the legitimacy and wisdom of President Ford’s pardon of Richard Nixon.

Critical Engagement Question

Did President Gerald Ford best preserve, protect, and defend the Constitution by pardoning Richard Nixon?

Materials

- Handout A: The Resignation of President Nixon
- Handout B: Memo to President Ford

Background/Homework

Have students read Handout A: The Resignation of Richard Nixon and answer the questions.

Warm-Up [20 minutes]

A. Write on the board the following quotation from President Gerald Ford: “I learned that public policy often took precedence over a rule of law. Although I respected the tenet that no man should be above the law, public policy demanded that I put Nixon – and Watergate – behind us as quickly as possible.”
B. Divide students into pairs or trios. Ask the groups to define, in context, what President Ford meant by the terms “public policy” and “rule of law.” Ask groups to share their definitions.

C. Have each group come up with at least one public policy reason for and against a pardon and one rule of law reason for and against a pardon. Ask groups to share their reasons, and write them on the board.

**Activity [20 minutes]**

A. Distribute Handout B: Memo to President Ford to each group. Tell students that their assignment is to play the part of advisors to President Ford. Ask students in their groups to review the reasons for and against issuing a pardon to former President Nixon, and to write a memo justifying their decision.

B. Ask students to share their decision with the class, and their top reason for making that decision.

**Wrap-Up [10 minutes]**

A. Remind students that Gerald Ford took office without having won election as President or even as Vice President. Also remind them that only about a third of Americans approved of pardoning Richard Nixon.

B. Absent a pardon, how would the prosecution of the disgraced Nixon have affected the transfer of power? Would Ford have been able to govern effectively?

C. Ask students whether, given the circumstances of the transfer of power from Nixon to Ford, Ford was justified in pardoning Richard Nixon. Was he was wise to pardon Nixon?

**Homework**

Have students read the Memorandum presented to Watergate Special Prosecutor Leon Jaworski that detailed reasons for and against a pardon. Students should make a Venn Diagram organizing the reasons given by Jaworski, the reasons they generated in class, and the reasons given by both. Finally, ask students to identify the reason for or against a pardon that they found most persuasive and why. The document can be found at www.ArticleII.org/units/Transfer.

**Extension**

Ask students to research the Supreme Court case *Burdick v. United States* (1915), which dealt with pardons, and to explain in a one-page essay its significance in Gerald Ford’s decision to pardon Richard Nixon.
Upon his inauguration, Richard Nixon, like the thirty-six presidents inaugurated before him, took an oath of office. He pledged, “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.” Yet as he made this pledge once again following his re-election in 1972, events were unfolding that would lead the American people to conclude that Nixon had violated that oath and damaged the Constitution.

In June 1972, five men were arrested during an attempt to break into Democratic National Committee headquarters (located in the Watergate office complex in Washington DC). It quickly became apparent that these men were connected to President Nixon's re-election campaign. Despite the embarrassing headlines, Nixon won re-election in a landslide, taking 520 electoral votes and over sixty percent of the popular vote as compared to his opponent (George McGovern) who won just seventeen electoral votes and thirty-eight percent of the popular vote.

Questions about the role of the White House and of President Nixon in the break-in and in attempts to cover it up only intensified after the election. Nixon refused for as long as he could to cooperate with a series of investigations, arguing fiercely that Presidents legitimately have the power—“executive privilege”—to carry out certain important duties without the interference of the other branches. His arguments failed to persuade his supporters in Congress and in the American public.

The House Judiciary Committee adopted articles of impeachment on July 27, 1974. Nixon, having been told by Republicans in Congress that he would not survive an impeachment battle, resigned a week later.

The Accidental President

In the midst of Watergate investigations, Richard Nixon’s Vice President, Spiro Agnew, faced charges of illegal financial dealings when he was Governor of Maryland. Agnew resigned under pressure on October 10, 1973. With the post of Vice President unfilled, the Twenty-Fifth Amendment came into effect, calling for the President to fill the position with the approval of Congress.

Nixon’s presidency was in danger due to the Watergate scandal. There was a very real possibility that the person Nixon appointed to fill the office of Vice President would soon become President. Nixon conferred with Congressional leaders and was told that one person on whom almost all members of Congress could agree was Gerald Ford. One of the men present at the meeting later recalled, “We gave Nixon no choice but Ford. Congress made Jerry Ford President.”

“I CANNOT PROLONG THE BAD DREAMS”

Vice President Gerald Ford was sworn in as President of the United States on August 9, 1974, never having been elected Vice President or President. He consoled Americans with the words, “Our long national nightmare is over. Our Constitution works; our great Republic is a government of laws and not of men.” He also asked
Americans, who “have not elected me as your President by your ballots, ...to confirm me as your President with your prayers.” Americans did, in a way, confirm Ford as their President; after taking the oath of office, Ford enjoyed an approval rating of seventy-one percent.

Though Ford observed that “our great Republic is a government of laws,” he refused to be limited by the letter of the law in handling the ongoing effort to investigate, and possibly prosecute, the disgraced Nixon. He made the extremely unpopular decision of issuing Nixon a full pardon “for all offenses against the United States.”

In explaining his pardon, Ford stated, “there is a higher Power, by whatever name we honor Him, who ordains not only righteousness but love, not only justice but mercy.” Ford argued that justice could not be impartial in dealing with a former President. He doubted that Nixon would receive the presumption of innocence at trial. He expected that it would be impossible for Nixon to receive a speedy trial, and he feared that a trial would reopen painful old wounds. He also suspected that without issuing a pardon, the investigation and possible prosecution of Richard Nixon for obstruction of justice would make it impossible for Ford to govern. Arguing that “Richard Nixon and his loved ones have suffered enough and will continue to suffer,” Ford exercised the power entrusted to the President in Article II, Section 2 of the Constitution to “grant a full, free, and absolute pardon unto Richard Nixon....”

Ford’s decision was highly controversial. Barely a third of Americans approved of the pardon at the time it was issued. Ford’s popularity rating instantly plummeted more than twenty percentage points, and ultimately fell below forty percent. By the time the 1976 campaign began, Ford was still so unpopular that his own party almost nominated another candidate. He ultimately lost the general election.

Despite the immediate unpopularity of Ford’s pardon, Americans have slowly come to see the wisdom of it. When he passed away in 2006, he was widely honored for guiding the nation through a moment of crisis, and about two-thirds of Americans now say they approve of his pardon. Though Ford did not consult public opinion in making his decision, he recalled late in life that he made the decision for the good of the country.

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**Critical Thinking Questions**

1. By what process did Gerald Ford become President?
2. Less than two years after winning re-election by a landslide, Richard Nixon was being replaced in office by a man who was, in effect, appointed by Congress. Was Gerald Ford’s presidency legitimate? Why or why not?
3. After Richard Nixon resigned and Gerald Ford was inaugurated as President, Ford said “our long national nightmare is over.” Why do you think it was so painful for the American people to endure the investigations about Watergate?
4. Gerald Ford’s pardon of Richard Nixon was highly unpopular. Should Ford have obeyed the will of the people and allowed investigations and possible prosecutions of Nixon to continue?
5. Why do some decisions that are unpopular at one point in time look better at a later date? What does this say about how citizens should judge their public officials?
Imagine you are an advisor to President Ford. Richard Nixon has just resigned from the presidency. He has resigned because of criminal acts committed by members of his campaign staff, and because of the exposure of efforts he and his staff made to cover up those crimes and obstruct investigations into those crimes. There is a widespread sense of outrage in the American people.

President Ford has just taken the oath of office. In it he pledged to “preserve, protect, and defend the Constitution of the United States.” He must now decide whether he can best carry out his oath by pardoning Nixon or by allowing criminal investigations to continue.

Review the arguments for and against a pardon that you and your classmates shared earlier. Discuss with one another which arguments you find most persuasive.

Mr. President–

After reviewing the alternatives, we believe that you can best preserve, protect, and defend the Constitution by pardoning/not pardoning Richard Nixon.

Most importantly, we believe that a pardon would: ____________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

Second, we believe that a pardon would: ____________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

Finally, we believe that a pardon would: ____________________________________________

____________________________________________________________________________________

____________________________________________________________________________________
The Election of 1800

Overview

The 1800 election was a major test of whether the young republic and its Constitution would live beyond its Founding generation. It was the first election in which two competing political parties engaged in an extended campaign against one another to win the presidency. This challenge was made more difficult by the fact that the new Constitution’s system for electing a President was not designed with political parties in mind. In fact, the Constitution’s process for electing the President had been designed to limit the influence of political parties. In the election of 1796, this method of electing the President led to the potentially dangerous situation of joining a President with a Vice President from the opposing party. In the election of 1800, this method of electing the President led to a tie, which was only settled after a long battle in the House of Representatives. The republic endured the election of 1800, but it was clear to most that the constitutional process for electing the President needed to be amended. To do so, Congress passed the Twelfth Amendment in 1803; the states ratified the amendment in 1804.

Objectives

Students will:

- Understand the process originally established in the Constitution for electing a President.
- Recognize ways in which the original electoral process failed when political parties took a role in selecting candidates.
- Evaluate the role of political parties in sorting presidential candidates.

Critical Engagement Question

What is gained and what is lost by giving political parties a role in electing our President?

Materials

- Handout A: The Election of 1800
- Handout B: Sorting the Candidates

Background/Homework

A. Have students read Handout A: The Election of 1800 and answer the questions.
B. Have them interview a parent or other adult. Students should ask about the purpose of political parties, how successful they are at selecting better candidates, and what specific successes or weaknesses they have.
C. You may also want to have students do an activity on the Electoral College from Volume I of Presidents and the Constitution (pg. 118).
**WARM-UP [10 minutes]**

A. Have students imagine they are electors in a presidential election. On a blank sheet of paper they should write the names of two Americans alive today whom they would like to see as President or Vice President (not including the sitting President). *Important: Students may NOT talk or work together.*

B. Collect the ballots and assign two students to count them. While the vote-counters are working, ask students to share the names of the individuals they listed on their ballots.

C. When your vote-counters are done, have them write the top five vote-getters, along with the number of votes each received, on the board. Explain to students that the number of votes necessary to win is half the number of students in the classroom, plus one.

D. Ask students to think about the outcome of an election that has no prior sorting process where potential candidates are evaluated.
   - Was the process democratic?
   - Was the outcome desirable?
   - Why is it a good idea to have a sorting process?

**ACTIVITY [30 minutes]**

A. Have students work in small groups. Distribute *Handout B: Sorting the Candidates*.

B. First, have students read the list of desired outcomes on *Handout B*. Students should add any desired outcomes they think should have been included, and cross out any listed outcomes they think are unimportant.

C. Students should then rank the desired outcomes from most important to least important.

D. Finally, ask students to recall their interviews and their own knowledge of political parties in order to evaluate our current two major-party system. How well does it accomplish all of those desired outcomes? Have a representative of each group share their thinking.

**WRAP-UP [10 minutes]**

Asking students to recall their homework interviews (if they conducted one) or their own knowledge, have them share their understandings of the US political party system. As a large group, discuss the following questions:

- Is the two-party system the best way to identify/sort candidates?
- What are advantages of a two-party system? Disadvantages?
- Is it a strength or a weakness of our constitutional system that such an important task is performed by political parties—institutions that are not mentioned in the Constitution?

**HOMEWORK**

Ask students to follow up with the person they interviewed for homework. They should share knowledge gained in the lesson and ask their interviewee some of the class discussion questions.

**EXTENSIONS**

Have students research the election of 1824—the first election after the ratification of the Twelfth Amendment to be settled by the House of Representatives. Ask them to write a brief explanation of the reasons that election had to be settled by the House.
When drafting the Constitution, the delegates to the Constitutional Convention struggled to define the office of the Presidency. In creating a new government that would be powerful but not tyrannical, the Founders paid special attention to the process by which the President would be elected. Some feared that tyranny was likely to emerge from a President who grew too powerful. Generally, these delegates wanted the President to be selected by a few men with extensive political experience, like the Congress, rather than by the people. They feared the people might be easily deceived by a demagogue (a calculating politician who seeks election by telling people what they want to hear).

Others feared that tyranny was more likely to come from the legislature. Generally, these delegates saw the President as a potentially powerful check on legislative abuse. They fought against the idea of having the legislature elect the President.

**The Electoral College**

As an alternative to popular election and election by the legislature, the delegates agreed to create a body of electors who would select the President. The Electoral College would allow a small number of leading citizens, chosen by the people of their state on the basis of their special knowledge of the candidates, wisdom, and experience, to elect the President. The Founders concluded that this process would make it most likely that the best candidates were elected, and not simply those candidates who appealed to narrow personal or partisan interests.

**Political Parties and the Electoral Process**

The system was not without its flaws. Two parts of the process were particularly troublesome. First, according to the Constitution, each elector was to vote for two individuals for President. There were no votes for Vice President; instead, the runner-up would be named Vice President. The problem with this process was made clear in the election of 1796.

This election produced a potentially dangerous outcome. A President from one party (John Adams from the Federalist Party) was elected alongside a Vice President from another party (Thomas Jefferson from the Republican Party). Though Adams and Jefferson respected each other, it was clear to members of both parties that it was not wise to have a President and Vice President of opposing parties. Therefore, in campaigning for the next election in 1800, both parties took care to name a “ticket” (a team of their candidate for President and their candidate for Vice President).

This change revealed a second way in which the electoral process established in the Constitution could not work with political parties. In the process as designed, electors would make independent decisions about which candidates to write into their ballots. With the appearance of political parties and presidential tickets, however, electors were expected to be “faithful” to their party’s ticket, or to follow the party line. This is exactly what happened in the election of 1800. The Republican Party candidate, Thomas Jefferson, was named on the ballot of all...
Republican electors, Jefferson’s Vice Presidential candidate, Aaron Burr, was also named on the ballots of all Republican electors. In other words, the election of 1800 had ended in a tie.

**The Deadlock of 1800**

The fact that it was a tie between candidates the Republican Party had selected for President and Vice President did not matter under the Constitution. All that mattered was that the Electoral College did not produce a winner. According to the Constitution, it was up to the House of Representatives to resolve this tie with each state having one vote.

Many in the Federalist Party despised Thomas Jefferson, and they did their best to prevent Jefferson from taking the Presidency. For a full week after electoral ballots were counted, the House of Representatives took vote after vote to settle the election. Through thirty-five rounds of voting, the House found itself in a deadlock. On the thirty-sixth ballot, a handful of Federalists who had been casting ballots against Jefferson decided to abstain, leaving Jefferson ahead on ten ballots, to Burr’s four, with two states abstaining. Jefferson was finally named President, and Aaron Burr Vice President, just as the Republican Party had intended.

**Keeping the Peace**

After this hotly contested election battle was concluded, President Jefferson made an effort to reconcile the opposing sides. In his Inaugural Address, he observed the great differences of opinion that divided Federalists from Republicans. But he also noted that “every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all Republicans, we are all Federalists.”

But calls to support the Constitution may begin to sound insincere if the electoral process frequently produces contested election results. To minimize the danger of another deadlock, Congress passed the Twelfth Amendment to the Constitution in 1803; the states ratified the amendment in 1804. This amendment required each elector to cast one vote for President and one vote for Vice President. Since that time, political parties have solidified their role in nominating candidates for President and Vice President.

Devotion to the Constitution and the rule of law despite our political differences are important reasons why Americans are able to peacefully transfer power from one President and one party to another.

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**Critical thinking questions**

1. What was the Electoral College designed to do?
2. What was the potential problem with the outcome of the election of 1796? What steps did the emerging political parties take to avoid it in the future?
3. Were the Founders wrong to want to keep the Presidency free of partisan differences? Explain.
4. Though it took a long time to settle the election of 1800, the electoral process did ultimately produce a winner. Do you think it was really necessary to pass the Twelfth Amendment? Why or why not?
The Constitution as originally ratified made no provision for sorting potential candidates for the presidency. This system worked well enough when George Washington was, without question, “first in the hearts of his countrymen.” After our first two elections, however, when Washington refused to run for a third term and several individuals all wanted to become President, selecting the President became more complicated.

**Part One:** Listed below are some reasons for having a candidate sorting process. Read them; add any which might be missing; and then rank them with #1 being the most important and #10 being the least important.

- _____ to give the general electorate the widest possible range of choice in candidates
- _____ to identify the most experienced candidates
- _____ to identify the wisest candidates
- _____ to identify the candidates closest to the principles of their party’s platforms
- _____ to identify the candidates best able to cooperate with Congress
- _____ to identify the candidates best able to cooperate with world leaders
- _____ to identify the candidates who want the office most
- _____ Other: ____________________________
- _____ Other: ____________________________
- _____ Other: ____________________________

**Part Two:** How well do political parties accomplish these goals?
The Election of 1860

Overview

The election of 1860 was the only election in our history that did not result in a peaceful transfer of power. As political developments changed the way the Constitution’s compromises on slavery were understood and applied, Americans from both North and South expressed fears about conspiracies to either impose or prohibit slavery throughout the nation. Fearing a loss of power within the Union, many Southerners revisited arguments about the nature of the Constitution. Some argued that the Constitution was a compact among the states, and that interpretation seemed to allow for states to secede, or withdraw from that compact. After the Republican candidate, Abraham Lincoln, was elected President in 1860—without even appearing on the ballot in ten Southern states—Southern states rapidly took action to secede from the Union, and President Lincoln took action to keep the Union together.

Objectives

Students will:

- Understand important developments leading up to the election of 1860 that challenged the Constitution’s original compromises on slavery.
- Analyze why the election of 1860 did not result in a peaceful transfer of power.
- Assess the validity of South Carolina’s justification of secession.

Critical Engagement Question

Why was the transfer of power not peaceful after the election of 1860?

Materials

- Handout A: The Election of 1860
- Handout B: Mock Ballots
- Handout C: Lincoln’s First Inaugural Address
- Handout D: The Right to Leave?
- Handout E: Two Declarations

Background/Homework

Have students read Handout A: The Election of 1860 and answer the questions.

Day One

Warm-Up [10 minutes]

A. As students enter, share with them the following fictitious scenario: Some students have complained to the principal that there is too much homework. The principal has decided that a “Homework Czar” will decide on a school-wide homework policy. The students will elect the Homework Czar.
Tell students there will be a secret ballot vote as you distribute **Handout B: Mock Ballots**. Give boys the ballot with four candidates and girls the ballot with three. **Important: Have copies of the two different ballots ready in your hand as you pass them out, and do NOT tell students there are two different ballots.**

Make a show of counting the ballots. (The actual count is irrelevant.) Announce that the winner, with thirty-nine percent of the vote, is Candidate D. What is important is the fact that the “winning” candidate will not have been on the girls’ ballots, yet his stated intentions will affect them. Allow students to discuss how this process made them feel.

**Activity [ 30 minutes ]**

A. Connect this exaggerated Homework Czar scenario to the election of 1860 by directing students to the quote in **Handout A** by a Southern pamphleteer: “[The Republican Party] exists only in the Northern states. ...Where is the security of the South, and what is her position in the Union?”

B. Ask students to consider the following questions as a large group, encouraging them to refer to **Handout A** for support in their thinking:
   - What does the Southern pamphlet author mean by “partisan organization”?
   - What does he mean by “exclusively and intensely sectional”?
   - Are these complaints justified?
   - Are his last two questions justified?

**Wrap-Up [ 10 minutes ]**

In a mini-lecture, remind students that Lincoln, who was not even on the ballot in ten Southern states, received only forty percent of the popular vote. The two major Democratic candidates split their Party’s votes. Added together, they won eighty-four electoral votes and received forty-seven percent of the popular vote. Since Lincoln’s party promised to halt the expansion of slavery, Southerners feared that they had become a permanent minority. Harking back to the Continental Congress in 1776 declaring that the thirteen colonies were “free and independent states,” South Carolina asserted in its 1860 Declaration of Secession that it would once again become a free and independent state. In his First Inaugural Address, Lincoln outlined his arguments against the constitutionality of secession.

**Homework**

Have students read and complete **Handout C: Lincoln’s First Inaugural Address**.

**Day Two**

**Warm-Up [ 20 minutes ]**

A. Divide the class into four groups. Give each of the groups one of the scenarios from **Handout D: The Right to Leave**? Ask groups to role-play their scenarios in their groups and answer the questions that follow.

B. After a few moments, ask one student from each group to share their scenario and responses.

C. Ask students as a whole about when it is acceptable to leave a group. Does it matter if they joined the group voluntarily or were born into the group?
D. Remind students that our Constitution is, in part, an agreement to form institutions that will perform certain duties. What kinds of agreements have you seen or been part of? Students may suggest: merchant-customer; landlord-tenant; husband-wife; etc.

E. Finally, ask: Who or what were the parties to the Constitution? What would Lincoln say? What would South Carolina say?

**Activity [ 20 minutes ]**

A. Distribute **Handout E: Two Declarations**. Give students a few moments to skim over the two documents, and then ask the class if they notice any similarities in phrasing.

B. Divide the class into pairs and assign each pair one or more sets of quotations from the Declaration of Independence and South Carolina's Declaration of Secession.

C. For each set of quotations, students should answer the following questions:
   - What do these two sections have in common?
   - How are they different? How significant are those differences?
   - What main points does the Declaration of Independence make?
   - What main points does the Declaration of Secession make?

D. Ask each pair to share their analysis with the class.

E. Once all sections of the documents have been discussed, ask students if they think South Carolina was justified in using the Declaration of Independence as a model for its Declaration of Secession.

**Wrap-Up [ 10 minutes ]**

To wrap up, discuss the following questions:

- Whose arguments were more persuasive: Lincoln's or South Carolina's?
- In arguing for/against the legitimacy of secession, both South Carolina and President Lincoln referred to the numerous agreements made between the colonies and, later, the states: the Articles of Association (1774), the Declaration of Independence (1776), the Articles of Confederation (1781), and the Constitution (1789). Does the existence of this series of agreements support or oppose the argument that the Union is perpetual?
- Who gets to decide whether the Union is perpetual? Why?

**The Issues Endure**

The question of whether states should be able to oppose the federal government's acts as unconstitutional has been debated in several important documents. Have students summarize the arguments about how states should be able to judge the constitutionality of federal government actions in the following documents: Report and Resolutions of the Hartford Convention; Virginia Resolutions; Kentucky Resolutions; South Carolina Exposition and Protest; South Carolina Ordinance of Nullification. Students should also look for more contemporary resolutions of this nature, passed by New Hampshire and other states in response to proposed national healthcare legislation. These documents can be found at [www.ArticleII.org](http://www.ArticleII.org).
The Constitution created a federal system with a national government of enumerated powers. The states and the people kept the powers not given to the Constitution. But one important question that the Constitution left unanswered was: Could states oppose the national government if they believed it exercised more power than the Constitution granted? If so, how?

Some, including James Madison and Thomas Jefferson, believed states could challenge the federal government. Madison and Jefferson argued in 1798 that the Constitution was a “compact” (a contract or agreement) entered into by the states. Therefore, they argued, states should have power to challenge the constitutionality of acts of Congress. Thirty years later, some Southern states objected to a tariff (a tax on imports) imposed by Congress. Angry citizens in South Carolina began to talk about “nullifying” the law (declaring the law to be without force in South Carolina). Compromises eventually settled the controversy.

**Slavery and the Constitution**

Debates about the Constitution and slavery continued. Northerners resented the three-fifths compromise, which allowed Southern states to count three-fifths of their slave populations for representation in Congress. More troublesome was the Constitution’s Fugitive Slave Clause, which said states could not harbor escaped slaves. Many Northern states passed state “personal liberty” laws that interfered with enforcement of federal fugitive slave laws. Finally, Congress banned the importation of slaves as soon as the Constitution allowed in 1808. But by the late 1850s some Southerners were calling for the reopening of the slave trade.

The admission of new states also threatened to upset the balance of power between North and South. The Missouri Compromise of 1820 admitted Missouri as a slave state, Maine as a free state, and drew a line that divided remaining lands for future states. In the Kansas-Nebraska Act of 1854, the doctrine of popular sovereignty turned Kansas into a battleground. Violence between settlers was so common that the territory became known as “Bleeding Kansas.”

Supreme Court rulings also stood in the way of compromise. In 1842 the Court ruled that personal liberty laws in Northern states were unconstitutional. This paved the way for a new federal Fugitive Slave Act in 1850, which forced state officials to arrest anyone suspected of being an escaped slave. Northerners were forced to support a practice that many of them found morally wrong. Then, the Court held in *Dred Scott v. Sanford* (1857) that Congress could not prohibit slavery in federal territories. Northerners believed that a Southern minority was going to impose slavery on the unwilling majority. The prospect of civil war was on the horizon.

**The Election of 1860**

A new political party, the Republican Party, was formed in 1854. The Republican Party had two defining features: it opposed slavery, and it was only in the North. These two features prompted Southerners to worry about
their place in the Union. One Southern pamphleteer complained that the Republican Party “exists only in the Northern states, and for the first time in our history a partisan organization, exclusively and intensely sectional, has obtained ascendancy in our Government. ...In the South it has no practical existence. ...The bond of brotherhood between the North and the South, so far as political parties are concerned, is broken. Where is the security of the South, and what is her position in the Union? If history furnishes any lessons of wisdom or experience, she must rely upon herself for protection and safety.”

Southerners hardened their position in response to the perceived threat of the Republican Party, causing a split in the Democratic Party. Democrats split their votes and Abraham Lincoln won the election of 1860 with 180 (out of 303) electoral votes. He won barely forty percent of the popular vote. He was not on the ballot in ten Southern states.

**Secession of South Carolina**

Citing arguments that the Constitution was a compact among the states, Southern states took steps to withdraw from that compact. South Carolina’s Declaration of Secession cited the Declaration of Independence, stating that “whenever any form of government becomes destructive of the ends for which it was established, it is the right of the people to alter or abolish it, and to institute a new government.”

South Carolina believed secession was justified and each state could judge on its own whether the federal government had failed to live up to its purposes, but Lincoln believed otherwise. He believed the union of states created by the Constitution was perpetual. He asked in his First Inaugural Address, “If the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate it—break it, so to speak—but does it not require all to lawfully rescind it?” A portion of the people, he said, could not destroy what the whole people had created.

Claiming that the Northern states had repeatedly tried to deny the Southern states their constitutional right to slavery, South Carolina declared that their relationship to the Union was dissolved. Before Lincoln was inaugurated as President, seven Southern states seceded from the Union. These states created their own nation, the Confederate States of America (CSA). Lincoln, however, never acknowledged the CSA as a nation, instead considering the seceded states to be in rebellion.

In the growing strife, Confederate troops fired on Ft. Sumter, a federal fort in South Carolina. Four more states seceded. The transfer of power was not peaceful, and the nation divided was now at war against itself.

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**Critical thinking questions**

1. List two compromises on slavery that were written into the Constitution.
2. Why do you think the expansion of the United States westward and the addition of new states made it difficult for the Constitution’s compromises about slavery to continue?
3. Why did northerners fear the Supreme Court’s rulings on slavery?
4. Do you think the Republican Party was a threat to the South? Why or why not?
5. Why did southerners believe that they could secede from the Union? Why did Lincoln believe they could not?
Ballot: Homework Czar

- **Candidate A:** Wants each class to decide for itself whether all students do their own homework or whether to select a small handful of students to do all the homework for the class.

- **Candidate B:** Wants the students from the National Honor Society to do all the homework for the entire school.

- **Candidate C:** Thinks the idea of a Homework Czar is divisive and just wants teachers to keep doing whatever they have been doing.

- **Candidate D:** Wants all the girls in the school to do all assigned homework so that boys won’t have to do any.
I hold that in contemplation of universal law and of the Constitution the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. …Continue to execute all the express provisions of our National Constitution, and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself.

…If the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate it—break it, so to speak—but does it not require all to lawfully rescind it?

The Union is much older than the Constitution. It was formed, in fact, by the Articles of Association [by the First Continental Congress] in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured, and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778. And finally, in 1787, one of the declared objects for ordaining and establishing the Constitution was “to form a more perfect Union.”

But if destruction of the Union by one or by a part only of the States be lawfully possible, the Union is less perfect than before the Constitution, having lost the vital element of perpetuity. …It follows from these views that no State upon its own mere motion can lawfully get out of the Union; that resolves and ordinances to that effect are legally void, and that acts of violence within any State or States against the authority of the United States are insurrectionary or revolutionary, according to circumstances.

[Has] any right plainly written in the Constitution … been denied? I think not. …Think, if you can, of a single instance in which a plainly written provision of the Constitution has ever been denied. …May Congress prohibit slavery in the Territories? The Constitution does not expressly say. Must Congress protect slavery in the Territories? The Constitution does not expressly say...

In your hands, my dissatisfied fellow-countrymen, and not in mine, is the momentous issue of civil war. The Government will not assail you. You can have no conflict without being yourselves the aggressors. You have no oath registered in heaven to destroy the Government, while I shall have the most solemn one to “preserve, protect, and defend” it.

1. What are Lincoln’s arguments against secession?

2. Which do you find most persuasive? Least persuasive? Why?
The Right to Leave?

Scenario 1
You and a group of friends have arranged to rent a special room at a restaurant to throw a birthday party for another friend. Each of you has agreed to pay a share of the cost.

Would you be justified in later refusing to pay your share of the cost if:
1. You do not like the restaurant the group selects?
2. You discover that the friend for whom you are throwing the party has secretly been saying bad things about you behind your back?
3. You learn that some of your friends plan to smuggle in alcohol?
4. You would never be justified in refusing.

Scenario 2
You voluntarily joined your school’s track team and have been training to be part of the relay team. The state championship is a week away.

Would you be justified in quitting the track team if:
1. You get bored by training?
2. You develop a mild injury while training that your doctor says might become a major injury if you continue to train and then compete?
3. You discover that two other members of your team have been using steroids?
4. You would never be justified in quitting.
**Scenario 3**

There have been several thefts and acts of vandalism in your neighborhood. Your neighborhood is far away from the nearest police station. Families in the neighborhood decide to hire a private security firm together, with every family paying a share of the cost.

Would you be justified in leaving this neighborhood association, ceasing to pay your dues, if:

1. You don’t like the color of the security firm’s uniforms?
2. You discover that the crime problem was really greater in another part of the town—not the part in which you live?
3. You strongly suspect that several members of the security firm have been stealing property?
4. You would never be justified in leaving the association.

**Scenario 4**

You have just turned 18 years old. You have been arguing with your family a lot. You move away to college and are wondering whether to end contact with your family.

Would you be justified in ending contact with your family if:

1. Your family asked you to begin paying your own cell phone bill?
2. Your family had lost most of your college fund as a result of bad financial decisions?
3. Your family had been physically abusive?
4. You would never be justified in ending contact with them.
# Two Declarations

**Directions:** Read the excerpts from the Declaration of Independence and South Carolina’s Declaration of Secession, and discuss the questions that follow.

<table>
<thead>
<tr>
<th>Declaration of Independence (1776)</th>
<th>Declaration of Secession (1860)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> 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.</td>
<td>And now the State of South Carolina having resumed her separate and equal place among nations, deems it due to herself, to the remaining United States of America, and to the nations of the world, that she should declare the immediate causes which have led to this act.</td>
</tr>
<tr>
<td>What was the purpose of this document?</td>
<td>What was the purpose of this document?</td>
</tr>
<tr>
<td><strong>2</strong> 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.</td>
<td>We maintain that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part of the agreement, entirely releases the obligation of the other; and that where no arbiter is provided, each party is remitted to his own judgment to determine the fact of failure, with all its consequences.</td>
</tr>
<tr>
<td>According to this document, when are a people justified in getting rid of one government and starting another one?</td>
<td>According to this document, who decides if one party in a contract has broken the terms?</td>
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</table>
### Two Declarations (cont.)

<table>
<thead>
<tr>
<th>Declaration of Independence (1776)</th>
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<td>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. [The Declaration here lists twenty-seven grievances against the King.]</td>
<td>We affirm that these ends for which this Government was instituted [described in the Preamble] have been defeated, and the Government itself has been made destructive of them by the action of the non-slaveholding States. Those States have assumed the right of deciding upon the propriety of our domestic institutions; and have denied the rights of property established in fifteen of the States and recognized by the Constitution; they have denounced as sinful the institution of slavery; they have permitted open establishment among them of societies, whose avowed object is to disturb the peace and to eloign [take away] the property of the citizens of other States. They have encouraged and assisted thousands of our slaves to leave their homes; and those who remain, have been incited by emissaries, books and pictures to servile insurrection.</td>
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<td>3</td>
<td>4</td>
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<tr>
<td>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.</td>
<td>On the 4th day of March next, [the Republican] party will take possession of the Government. ...The guaranties of the Constitution will then no longer exist; the equal rights of the States will be lost. The slaveholding States will no longer have the power of self-government, or self-protection, and the Federal Government will have become their enemy. Sectional interest and animosity will deepen the irritation....</td>
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<tr>
<td>What was the purpose of this section of the Declaration of Independence?</td>
<td>What was the purpose of this section of the Declaration of Secession?</td>
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<tr>
<td>What is the purpose of this section of the document?</td>
<td>What time period does this section of the document reference?</td>
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## TWO DECLARATIONS (cont.)

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<tbody>
<tr>
<td><strong>5</strong> 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 the 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 do all other acts and things which independent states may of right do.</td>
<td>We, therefore, the People of South Carolina, by our delegates in Convention assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, have solemnly declared that the Union heretofore existing between this State and the other States of North America, is dissolved, and that the State of South Carolina has resumed her position among the nations of the world, as a separate and independent State; with 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.</td>
</tr>
</tbody>
</table>

- What kind of association have the United States formed with this Declaration?

- What status does South Carolina claim to be reverting back to with this Declaration?
**THE RESIGNATION OF PRESIDENT NIXON**

**OVERVIEW**

Shortly before Richard Nixon was re-elected President in 1972, individuals connected with his re-election campaign were arrested while breaking into Democratic Party Headquarters at the Watergate office complex in Washington DC. Nixon was re-elected by an overwhelming margin, but questions surrounding his knowledge of the break-in, and his attempt to cover it up would not go away. During these investigations, Nixon’s Vice President, Spiro Agnew, was forced to resign on unrelated corruption charges. According to the Twenty-Fifth Amendment, the President must nominate a new Vice President when that office becomes vacant, and both houses of Congress must approve that Vice President. Because few in Congress believed that Nixon’s presidency would survive, key members of Congress told Nixon to nominate as Vice President a distinguished Republican Member of Congress, Gerald Ford. After Nixon’s resignation, Ford was sworn in as President and made the extremely unpopular decision of issuing Nixon a full pardon “for all offences against the United States.”

**OBJECTIVES**

Students will:

- Understand the sequence of events by which Gerald Ford became President.
- Assess the legitimacy of Gerald Ford’s presidency.
- Evaluate the legitimacy and wisdom of President Ford’s pardon of Richard Nixon.

**CRITICAL ENGAGEMENT QUESTION**

Did President Gerald Ford best preserve, protect, and defend the Constitution by pardoning Richard Nixon?

**MATERIALS**

- Handout A: The Resignation of President Nixon
- Handout B: Memo to President Ford

**BACKGROUND/HOMWORK**

Have students read Handout A: The Resignation of Richard Nixon and answer the questions.

**WARM-UP [20 minutes]**

A. Write on the board the following quotation from President Gerald Ford: “I learned that public policy often took precedence over a rule of law. Although I respected the tenet that no man should be above the law, public policy demanded that I put Nixon – and Watergate – behind us as quickly as possible.”
B. Divide students into pairs or trios. Ask the groups to define, in context, what President Ford meant by the terms “public policy” and “rule of law.” Ask groups to share their definitions.

C. Have each group come up with at least one public policy reason for and against a pardon and one rule of law reason for and against a pardon. Ask groups to share their reasons, and write them on the board.

**Activity [20 minutes]**

A. Distribute Handout B: Memo to President Ford to each group. Tell students that their assignment is to play the part of advisors to President Ford. Ask students in their groups to review the reasons for and against issuing a pardon to former President Nixon, and to write a memo justifying their decision.

B. Ask students to share their decision with the class, and their top reason for making that decision.

**Wrap-Up [10 minutes]**

A. Remind students that Gerald Ford took office without having won election as President or even as Vice President. Also remind them that only about a third of Americans approved of pardoning Richard Nixon.

B. Absent a pardon, how would the prosecution of the disgraced Nixon have affected the transfer of power? Would Ford have been able to govern effectively?

C. Ask students whether, given the circumstances of the transfer of power from Nixon to Ford, Ford was justified in pardoning Richard Nixon. Was he was wise to pardon Nixon?

**Homework**

Have students read the Memorandum presented to Watergate Special Prosecutor Leon Jaworski that detailed reasons for and against a pardon. Students should make a Venn Diagram organizing the reasons given by Jaworski, the reasons they generated in class, and the reasons given by both. Finally, ask students to identify the reason for or against a pardon that they found most persuasive and why. The document can be found at www.ArticleII.org/units/Transfer.

**Extension**

Ask students to research the Supreme Court case *Burdick v. United States* (1915), which dealt with pardons, and to explain in a one-page essay its significance in Gerald Ford’s decision to pardon Richard Nixon.
Upon his inauguration, Richard Nixon, like the thirty-six presidents inaugurated before him, took an oath of office. He pledged, “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.” Yet as he made this pledge once again following his re-election in 1972, events were unfolding that would lead the American people to conclude that Nixon had violated that oath and damaged the Constitution.

In June 1972, five men were arrested during an attempt to break into Democratic National Committee headquarters (located in the Watergate office complex in Washington DC). It quickly became apparent that these men were connected to President Nixon’s re-election campaign. Despite the embarrassing headlines, Nixon won re-election in a landslide, taking 520 electoral votes and over sixty percent of the popular vote as compared to his opponent (George McGovern) who won just seventeen electoral votes and thirty-eight percent of the popular vote.

Questions about the role of the White House and of President Nixon in the break-in and in attempts to cover it up only intensified after the election. Nixon refused for as long as he could to cooperate with a series of investigations, arguing fiercely that Presidents legitimately have the power—“executive privilege”—to carry out certain important duties without the interference of the other branches. His arguments failed to persuade his supporters in Congress and in the American public.

The House Judiciary Committee adopted articles of impeachment on July 27, 1974. Nixon, having been told by Republicans in Congress that he would not survive an impeachment battle, resigned a week later.

The Accidental President

In the midst of Watergate investigations, Richard Nixon’s Vice President, Spiro Agnew, faced charges of illegal financial dealings when he was Governor of Maryland. Agnew resigned under pressure on October 10, 1973. With the post of Vice President unfilled, the Twenty-Fifth Amendment came into effect, calling for the President to fill the position with the approval of Congress.

Nixon’s presidency was in danger due to the Watergate scandal. There was a very real possibility that the person Nixon appointed to fill the office of Vice President would soon become President. Nixon conferred with Congressional leaders and was told that one person on whom almost all members of Congress could agree was Gerald Ford. One of the men present at the meeting later recalled, “We gave Nixon no choice but Ford. Congress made Jerry Ford President.”

“I cannot prolong the bad dreams”

Vice President Gerald Ford was sworn in as President of the United States on August 9, 1974, never having been elected Vice President or President. He consoled Americans with the words, “Our long national nightmare is over. Our Constitution works; our great Republic is a government of laws and not of men.” He also asked
Americans, who “have not elected me as your President by your ballots, ...to confirm me as your President with your prayers.” Americans did, in a way, confirm Ford as their President; after taking the oath of office, Ford enjoyed an approval rating of seventy-one percent.

Though Ford observed that “our great Republic is a government of laws,” he refused to be limited by the letter of the law in handling the ongoing effort to investigate, and possibly prosecute, the disgraced Nixon. He made the extremely unpopular decision of issuing Nixon a full pardon “for all offenses against the United States.”

In explaining his pardon, Ford stated, “there is a higher Power, by whatever name we honor Him, who ordains not only righteousness but love, not only justice but mercy.” Ford argued that justice could not be impartial in dealing with a former President. He doubted that Nixon would receive the presumption of innocence at trial. He expected that it would be impossible for Nixon to receive a speedy trial, and he feared that a trial would reopen painful old wounds. He also suspected that without issuing a pardon, the investigation and possible prosecution of Richard Nixon for obstruction of justice would make it impossible for Ford to govern. Arguing that “Richard Nixon and his loved ones have suffered enough and will continue to suffer,” Ford exercised the power entrusted to the President in Article II, Section 2 of the Constitution to “grant a full, free, and absolute pardon unto Richard Nixon....”

Ford’s decision was highly controversial. Barely a third of Americans approved of the pardon at the time it was issued. Ford’s popularity rating instantly plummeted more than twenty percentage points, and ultimately fell below forty percent. By the time the 1976 campaign began, Ford was still so unpopular that his own party almost nominated another candidate. He ultimately lost the general election.

Despite the immediate unpopularity of Ford’s pardon, Americans have slowly come to see the wisdom of it. When he passed away in 2006, he was widely honored for guiding the nation through a moment of crisis, and about two-thirds of Americans now say they approve of his pardon. Though Ford did not consult public opinion in making his decision, he recalled late in life that he made the decision for the good of the country.

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**Critical Thinking Questions**

1. By what process did Gerald Ford become President?
2. Less than two years after winning re-election by a landslide, Richard Nixon was being replaced in office by a man who was, in effect, appointed by Congress. Was Gerald Ford’s presidency legitimate? Why or why not?
3. After Richard Nixon resigned and Gerald Ford was inaugurated as President, Ford said “our long national nightmare is over.” Why do you think it was so painful for the American people to endure the investigations about Watergate?
4. Gerald Ford’s pardon of Richard Nixon was highly unpopular. Should Ford have obeyed the will of the people and allowed investigations and possible prosecutions of Nixon to continue?
5. Why do some decisions that are unpopular at one point in time look better at a later date? What does this say about how citizens should judge their public officials?
Imagine you are an advisor to President Ford. Richard Nixon has just resigned from the presidency. He has resigned because of criminal acts committed by members of his campaign staff, and because of the exposure of efforts he and his staff made to cover up those crimes and obstruct investigations into those crimes. There is a widespread sense of outrage in the American people.

President Ford has just taken the oath of office. In it he pledged to “preserve, protect, and defend the Constitution of the United States.” He must now decide whether he can best carry out his oath by pardoning Nixon or by allowing criminal investigations to continue.

Review the arguments for and against a pardon that you and your classmates shared earlier. Discuss with one another which arguments you find most persuasive.

Mr. President–

After reviewing the alternatives, we believe that you can best preserve, protect, and defend the Constitution by pardoning/not pardoning Richard Nixon.

Most importantly, we believe that a pardon would: ________________________________________

____________________________________________________________________________

____________________________________________________________________________

Second, we believe that a pardon would: ____________________________________________

____________________________________________________________________________

____________________________________________________________________________

Finally, we believe that a pardon would: __________________________________________

____________________________________________________________________________

____________________________________________________________________________
**UNIT 1—POWERS HEREIN GRANTED: THE PRESIDENT AND FEDERAL POWER**

**Constitutional Connection: The President and Federal Power**

2. 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.

3. The power to execute the laws of the United States is located in or given to one person, who will be called the President.

4. The President must swear or affirm that he will perform his job faithfully and always work to uphold the Constitution.

5. The President will keep Congress informed on the condition of the nation. He will also recommend laws he thinks are needed and that would be helpful.

6. The President has a responsibility to enforce the law without fail.

7. The President can be removed from office for bad acts. He is not above the law.

**THOMAS JEFFERSON**

**Handout A: Thomas Jefferson and the Louisiana Purchase**

1. strictly

2. Almost half of goods exported from the US were shipped through the port city.

3. Try to buy lands east of the Mississippi; Try to buy New Orleans or part of it; Secure access to the river if all else failed.

4. The Constitution did not expressly give the federal government the power to acquire and/or incorporate foreign territories. Jefferson had frequently and adamantly stated his views prior to becoming President that the national government must be strictly held to exercise only its enumerated powers.

5. Jefferson saw that his strongly-held beliefs were not immediately shared by the majority of his contemporaries, and he came to see that the momentous opportunity to expand the size of the United States was more important than convincing Congress and the American people of his point of view.

**Handout B: Jefferson’s Views on the Louisiana Purchase**

1. August 1803

2. August 1803

3. September 1803

4. September 1803

5. September 1803

6. September 1803

**Grover Cleveland**

**Handout A: Grover Cleveland and the Texas Seed Bill Veto**

1. He refused to follow the spoils system; supported the Pendleton Bill; canceled orders from inefficient Navy contractors; ended contracts with railroad companies who had not lived up to the terms of their contracts.

2. They were fraudulent.

3. He did not believe the Constitution authorized the federal government to provide citizens with unearned, direct assistance.

4. Cleveland did his best to uphold his oath of office and preserve the Constitution; he believed the crisis would be better met by individuals and communities helping each other.

5. Accept reasoned answers.

**Handout C: Document Guide**

*Vocabulary*

1. payment

2. wide-ranging

3. hardship

4. avoid

5. responsible

6. generous
7. permission
8. common
9. faithfully
10. protective
11. giving

Context Questions
1. President Grover Cleveland
2. February 16, 1887
3. It was an explanation of his veto of the Texas Seed Bill.

Comprehension Questions
1. It would prevent the crisis from continuing and allow farmers to plant new crops.
2. generous and charitable
3. The Constitution does not authorize it, and further, the government should not support the people.
4. When the government provides direct assistance, it discourages people from helping each other, and therefore damages the bonds between individuals and within communities.
5. People will help the farmers.

Critical Thinking Questions
1. The President would adhere to the Constitution during a crisis because he believed that it provided a means to empower individuals to help each other get through that crisis, and because he had taken an oath to uphold the Constitution. Accept additional reasoned answers.
2. Accept reasoned answers.
3. Accept reasoned answers.
4. Individuals giving money to charity decide where to give their money. When individuals give money to the government to use for direct assistance, government officials decide how to allocate those resources.
5. Individuals do not have the same experience of helping each other when the government is involved in direct assistance. Some may give less, counting on others to give more. Some may grow to resent the direct assistance given to some to whom they would not have chosen to give their money or resources. Accept additional reasoned answers.
6. Accept reasoned answers.

HOOVER AND ROOSEVELT

Handout A: Herbert Hoover, Franklin D. Roosevelt, and the Great Depression

1. According to Hoover, individuals and organizations free from government interference were the best forces of social and economic change; According to Roosevelt, government planning was needed to solve social and economic problems.

2. Hoover encouraged businessmen not to cut production or lay off workers; Asked Congress to increase spending on public works projects and to increase funding for banks to prevent mortgage foreclosures; created the Reconstruction Finance Corporation; encouraged farmers to voluntarily cooperate to raise prices; Promoted voluntarism as a way to ease the crisis; avoided spending large amounts of federal money so as not to increase the public debt. Roosevelt proposed and expanded numerous First New Deal reforms including the Federal Deposit Insurance Corporation; National Industrial Recovery Act; Civilian Conservation Corps; Public Works Administration; and the Tennessee Valley Authority. The Second New Deal was made up of extensive public works projects; the Social Security Act; increased income taxes on the wealthy; and several programs intended to help farmers, laborers, and the unemployed.

3. Accept reasoned answers.

4. Hoover believed the government’s primary role was to promote liberty by empowering individuals and freeing them from government interference. He promoted voluntarism, self-reliance and limited government. Roosevelt believed that additional government action was needed to protect the welfare of less fortunate individuals. He supported government planning for social and economic problems and increased the size of the federal government.
**Constitutional Connection: War and the Constitution**

1. Some students may say that a declaration of war is the beginning of a war and that war cannot exist without a declaration; others may say declaring war can happen at any time after the beginning of hostilities, or not at all.

2. The Necessary and Proper Clause empowers Congress to make all needed and appropriate laws for “any department” of the government. Students may say that this increases Congress’s war powers by allowing it to make rules for the executive and judicial branches regarding war.

3. To lead the military; accept additional reasoned answers.

4. The Supreme Court has ruled on the President’s power to suspend *habeas corpus*; conditions when it may be suspended; Congress’s power to create military commissions to try illegal combatants; interpreted the Constitution as it may apply to enemy combatants and illegal combatants; interpreted international treaties ratified by the United States; and other issues related to war.

**War in the Early Republic**

**Handout A: War in the Early Republic**


2. Students may say that Madison appreciated the Constitution’s delegation of the power to declare war to the federal government’s largest and most deliberative body, made up of representatives of the states and the people from throughout the nation.

3. Accept reasoned answers.

**Handout B: Name That President**

*Section I*

1. Washington
2. Adams
3. Washington, Adams
4. Washington, Adams
5. Jefferson, Madison
6. Washington, Adams
7. Madison
8. Madison

*Section II*

1-4: accept reasoned answers.

**Lyndon Johnson and Richard Nixon**

**Handout A: Lyndon Johnson and Richard Nixon, and the War Powers Resolution**

1. The delegates to the Constitutional Convention agreed that the President alone should not be able to start wars. At first, they gave the power to “make war” to Congress. But after some discussion, they agreed that the legislature was too large and too slow to do this effectively. They changed “make war” to “declare war.” This ensured that the President could not declare war on his own. (But it left him with the power, as Commander in Chief, to repel attacks without waiting for approval from Congress. Congress was also given the power to approve the military budget. The President is Commander in Chief of the military forces. The delegates at the Constitutional Convention did not want to create an executive that would be as powerful and unaccountable as a King, but recognized that an individual is more suited to swift action and decision making than a large body like Congress.

2. A law limiting the President’s ability to commit troops around the world without approval from Congress or a declaration of war.

3. He believed it was an unconstitutional limitation on the President’s power.

4. Accept reasoned answers.
Handout C: The War Powers Resolution

1. The reason for this law is to be true to the Founders’ intent and make sure both the President and Congress agree when the military should go into combat.

2. The President can only exercise his power as Commander in Chief when there is a declaration of war, when Congress specifically authorizes him to do so, or when there is a “national emergency” of an attack on the US or the military.

3. The President has to check with Congress before sending troops into combat.

4. If there is no declaration of war, the President has two days to report to Congress on the reasons for the deployment; what authority he had to begin it; and how long he expects it to take place.

5. Troops must be withdrawn within 60 days unless Congress declares war or authorizes the use of force; extends the deadline; or unless Congress cannot meet because of the war.

6. Any time troops are fighting anywhere outside the US without a declaration of war, Congress can tell the President to remove the troops.

George W. Bush

Handout A: George W. Bush and the War on Terror

1. Deliver Osama bin Laden and shut down the terrorist training camps, or the US will attack.

2. Strict rules of evidence that apply in criminal trials may not apply in Military Tribunals. Criminal trials must be open to the public, unlike Military Tribunals. Verdicts in criminal trials can be appealed in court, while the decisions of Military Tribunals can only be reviewed by the Commander in Chief (the President).

3. The Supreme Court at first dismissed the petitions. After 2004, the Court stopped dismissing them and gradually extended the rights afforded to foreign detainees at Guantanamo Bay.

4. Accept reasoned answers.

Handout A: George W. Bush and the Whiskey Rebellion

1. A 25% excise tax on liquor.

2. The civil authorities were unable to keep order and stop violent resistance and lawlessness.

3. Washington cited the Militia Act of 1792, passed by the legislative branch, as part of his authority to suppress insurrections. He involved the judicial branch of the national government when he consulted Associate Justice James Wilson. He met with Pennsylvania officials, bringing that state government into the decision-making process.

4. He blamed them for organizing resistance to the tax. Accept reasoned answers.

5. Washington understood his duty was to enforce the law firmly, while using military action only as a last resort. It was important to him that the people of the United States saw he had made his decision to act deliberately, in consultation with other branches and levels of government, as well as the firm nature of his response.

George Washington

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Handout B: Setting the Scene
1. Constitution
2. 25%; liquor
3. Militia Act; to “execute the laws of the union, (and) suppress insurrections.”
4. proclamation, an end to obstruction of the law
5. unpaid taxes; harassed tax collectors; mobs threatening to march on Pittsburg
6. his cabinet and PA officials; Associate Justice James Wilson
7. all “insurgents” must “disperse and retire peaceably to their respective abodes” by September 1.
8. a militia force was headed to Pennsylvania to deal with the situation.

Andrew Jackson

Handout A: Andrew Jackson and Indian Removal
1. a law allowing the President power to negotiate treaties with Indian tribes and buy their land
2. Everyone, regardless of their race/ethnicity, is born with natural rights including life, liberty and property.
3. The result in both decisions was to disempower the Cherokee in Georgia. Jackson did not take action against Georgia when that state ignored the ruling in Worcester v. Georgia (1831). In Cherokee Nation v. Georgia (1831), the Supreme Court held that the Cherokee could not sue in federal court to prevent being removed from their lands.
4. The Cherokee said the Treaty was a fraud and had been ratified without the consent of the majority of the tribe. Accept reasoned answers.
5. Jackson enforced the Indian Removal Act vigorously, and did not take actions to enforce a Supreme Court decision that may have impeded removal. Jackson believed that every branch of government had the power to interpret the Constitution. Although the decision in Worcester v. Georgia (1831) sided with the national government over a state government, he did not take action to enforce that ruling against Georgia. Students may say that he did not enforce that ruling because the state regulation involved was probably intended to hasten removal; they may also say that he did not enforce the decision because he personally supported what the state was doing. Accept reasoned answers.

Dwight D. Eisenhower

Handout A: Eisenhower and the Little Rock Crisis
1. The Plessy case upheld mandated segregation in public rail cars. The Brown decision overturned that ruling, holding that separate facilities were inherently unequal.
2. The Little Rock Crisis took place when the Governor of Arkansas refused to intervene when a mob prevented nine African American students from attending their school. A federal court had approved their desegregation plan as consistent with the Brown ruling and ordered integration to begin.
3. Eisenhower ordered the mob to disperse and when it did not, sent the 101st Airborne Division to keep the peace. He also federalized the Arkansas National Guard, removing those men from the Arkansas governor’s command.
4. Eisenhower described his constitutional duty to take care that the laws were faithfully executed as “inescapable.”
5. Students may say that the Constitution says the states and the people keep all the powers not given to the federal government and that therefore states are rightfully in charge of matters such as public education. They may also say that Article II says the President is Commander in Chief of the militia of the several states when called into actual service of the states, but that it does not say who can call them into service. Since Congress can declare war and provide for calling forth the militia, perhaps it is also Congress’s power to call the militia into service.

Handout B: Document-Based Question
Document A: 1. The President has the power to carry out the laws. He is in charge of the armed forces, and he is responsible for making sure the laws are enforced.
2. The militia could refer to the National Guard.
Document B: the states or the people
Document C: States cannot make laws that do not apply to everyone equally.
Document D: 1. September 4, 1957; 2. The Guard members do not seem to be taking any action with respect to Roberts. They are standing in front of the direction Roberts is facing, implying they are blocking him. Additional guard members seem to also be blocking the crowd.
Document E: 1. the evening of September 23, 1957; 2. There is a well-organized mob in front of Central High School. If the President wants to enforce the Court’s order, the city police will help them; 3. political allies of the Governor.

Document F: 1. to disperse; 2. the need to enforce the laws; the need to enforce equal protection of the laws.

Document G: 1. the morning of September 24, 1957. This message sounds much more urgent and begs the President for help. This message does not contain a note that the request will remain private, unlike the telegram in Document E. Accept reasoned answers.

Document H: 1. an executive order; 2. to show that he has attempted to resolve the situation without force but that the obstruction of the laws continues; 3. calling the US military into service, including the National Guard in Arkansas; 4. steps to disperse the mob and enforce desegregation in Little Rock.

Document I: 1. September 25, 1957; 2. escorting and protecting them; 3. These servicemen are not in combat with anyone, as usually happens when troops are “deployed.”

Document J: 1. They are forcing the protestors to leave at gunpoint. 2. This is a more forceful kind of crowd control than depicted in Document D.

Document K: 1. Violent obstruction of the law is not an acceptable way to express disagreement; 2. the assurance that the Executive Branch will enforce the laws faithfully; 3. in cases with extraordinary circumstances and when the state requests help.

Handout C: Senators’ Statements on the Trial of Andrew Johnson

1. For Conviction. This impeachment trial is a continuation of the fight against slavery, because Johnson represents slavery and its power.

2. For Conviction. Johnson is guilty of the constitutional crimes, but those are not the main point. We shouldn’t argue over the wording of laws when the President is a tyrant.

3. For Conviction. The President fired Stanton and has hired Thomas, and insists he can do so even though the Tenure of Office Act says he can’t. Case closed.

4. Against Conviction. I see no evidence that Johnson violated the Constitution. If we impeach a President when there is not proof of wrongdoing, no future President will be safe from impeachment anytime he disagrees politically with two-thirds of both Houses of Congress. The checks and balances of the Constitution are too important to be subject to politics.

5. Against Conviction. The Constitution has an important separation of powers. I may not like Johnson, but I can’t vote to impeach him for that reason alone. That would send a message to future generations that impeachment for political purposes is okay.

6. Against Conviction. The people may want us to remove Johnson, but in this situation it is not my job to do what the people say they want; it is to do justice. That is what I was elected to do.

UNIT 4—HIGH CRIMES AND MISDEMEANORS: IMPEACHMENT AND THE CONSTITUTION

Constitutional Connection: Impeachment and the Constitution

1-10: Accept reasoned answers.

ANDREW JOHNSON

Handout A: The Impeachment of Andrew Johnson

1. Johnson believed in “restoration” of the states to the Union, ending slavery but leaving the states in control of the rights of the freedmen. Republicans believed that Congress was in charge of a “reconstruction” process that would return the states to the Union only after those states had consented to a significant shift away from state power to federal control.

2. Stanton strongly opposed Johnson’s lenient approach toward the South and resisted Johnson’s policies.

3. A law requiring that any federal official whose appointment had required confirmation by the Senate could not be dismissed without the Senate’s approval.

4. The impeachment process proved to be effective to preserve the separation of powers. Some Senators worried that if Johnson had been removed from office in this impeachment trial, the systems of separation of powers and checks and balances built into the Constitution by the Framers would have been seriously jeopardized for all future presidents.
Richard Nixon and the Watergate Scandal

Handout A: Nixon and the Watergate Scandal

1. Nixon's re-election campaign conducted several break-ins at the Democratic National Committee (DNC) Headquarters in the Watergate office-apartment complex in Washington, DC. The purpose was to spy on the Democrats' campaign plans.

2. The series of events from the Watergate burglary, through the Nixon administration's attempts to conceal illegal activities, resulting in Nixon's resignation.

3. The tape recordings of conversations would allow investigators to determine "What the President knew and when he knew it."

4. Executive privilege is the idea that the separation of powers doctrine gives the president the right to keep certain information secret. In United States v. Nixon (1974), the unanimous opinion of the Court was that, while executive privilege is an important and legitimate principle, "The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial."

5. Accept reasoned answers.

Bill Clinton

Handout A: The Impeachment of Bill Clinton

1. Paula Jones was an Arkansas state employee who sued President Clinton for sexual harassment as a result of an encounter that took place when Clinton was the governor of Arkansas. She subpoenaed Lewinsky and Tripp in order to attempt to show a pattern of Clinton's sexual misconduct.

2. Starr thought that Clinton might have tried to keep the Lewinsky affair secret by encouraging Lewinsky to lie in the Jones case, or that he might have attempted to "buy her silence" by getting her a high-paying New York job.

3. He gave misleading testimony in his pretrial deposition in the Jones lawsuit and in his testimony to Starr's grand jury. (In addition, he made misleading statements to his aides and to the American people.)

4. the President's lies regarding his relationship with Monica Lewinsky

5. Accept reasoned answers.

6. Some may say that perjury and obstruction of justice are felonies deserving of impeachment even when the lies are only about private sexual matters. Others may say that whatever wrongs the President had committed were wrongs against his family, not matters of public concern because they did not threaten the national interests that the President is sworn to uphold. They may question how the President could be guilty of obstruction of justice when the Paula Jones suit was dismissed.

Handout C: Glossary

Affidavit: Written statement under oath. Lewinsky signed an affidavit in the Jones lawsuit, denying an affair with Clinton.

Grand jury: A group of people selected and sworn in by a court to determine whether sufficient evidence exists for a person to be charged with a crime. Kenneth Starr empanelled a grand jury to determine if Clinton had committed perjury and obstructed justice.

House Judiciary Committee: A standing committee in the US House of Representatives. One of the jobs of this committee is to investigate questions of impeachment and make recommendations to the full House of Representatives based on their findings. Starr delivered his report to this committee.

Immunity: Exemption from prosecution in return for providing information regarding the prosecution of others. Starr offered Lewinsky immunity in exchange for her cooperation in the case against Clinton.

Impeach: To accuse and bring to trial. The House of Representatives approved two articles of impeachment against Clinton.

Independent Counsel: An official appointed on a temporary basis to investigate a matter in which regular law-enforcement officers might have a conflict of interest. Kenneth Starr was appointed independent counsel to investigate claims that Clinton had taken part in dishonest financial dealings before becoming President.

Obstruction of justice: An attempt to interfere with the functioning of the courts or law enforcement officers, for example, by hiding evidence. Clinton was accused of obstructing justice in the Jones lawsuit.

Oval Office: The official office and primary place of work of the President of the United States in the West Wing of the White House. Nearby are a private study, a bathroom, a small dining room, and the office of the President's secretary. Lewinsky described to Tripp encounters that took place in the Oval Office.
Perjury: Lying under oath about an issue that is important to a case. Clinton was accused of perjury in the Jones lawsuit.

Pretrial deposition: Statement made under oath before a trial. Clinton gave a pretrial deposition for the Jones lawsuit.

Under oath: a solemn promise to tell the court the truth, the whole truth, and nothing but the truth. Several individuals, including Clinton, took these oaths within the context of affidavits, pre-trial depositions, and during Grand Jury testimony.

UNIT 5—TOGETHER WITH THE VICE PRESIDENT: PRESIDENTS AND THE TRANSFER OF POWER

Constitutional Connection: Presidents and the Transfer of Power

I. Electing the President
   1. In the original Constitution, electors completed ballots by writing in two candidates for President. In the 12th Amendment, electors cast one ballot for President and one ballot for Vice President.
   2. In the Constitution as written, all votes cast were for President; the top vote winner was elected President, and the runner up was elected Vice President. In the Twelfth Amendment, Presidential and Vice Presidential votes were cast and counted separately. This change was made to accommodate the role of political parties in the electoral process and led to “tickets” as parties named an individual candidate for each office.

II. Unexpected transfer of power
   1. If the President dies, resigns, or becomes otherwise incapable of completing his or her term, the Vice President takes over as President.
   2. The Twenty-Fifth Amendment provides a more specific procedure for the replacement of the Vice President, calling upon the President to nominate a replacement Vice President, and both houses of Congress to approve this Vice Presidential nominee by majority vote.

III. Oath of Office
   1. Some students may point to the text of the oath, which requires the President to be faithful to and protect the Constitution.
   2. Other students may point to the act of taking an oath, by which an individual makes a pledge before the whole nation, and, depending upon the oath taker’s religious beliefs, before God. Others may point to the place of the oath in the larger inauguration ceremony, which is a formal ritual at which our nation’s leaders, of both parties and of all branches, gather to affirm the transfer of power from President to President and at times from one party to another.

IV. Twenty-Second Amendment
   1. No person can be elected President more than twice. No person who has served more than two years of another President’s term can be elected more than once.

THE ELECTION OF 1800

Handout A: The Election of 1800

1. It was designed to make it most likely that the best candidates were elected by allowing the people in each state to vote for wise, experienced individuals who would in turn elect the President.

2. The President and Vice President—the winner and runner-up in electoral votes—were from opposing political parties. Both parties named a “ticket” of candidates for president and vice president.

3. Accept reasoned answers.

4. Accept reasoned answers.

THE ELECTION OF 1860

Handout A: The Election of 1860

1. Congress could not outlaw the slave trade until 1808; Southern states could count 3/5ths of their slave population for purposes of taxation and representation in Congress; a fugitive slave clause said states could not harbor escaped slaves.

2. Slave and free states worried that the addition of new states would give the other side more power in the national government.
3. The Court’s ruling that personal liberty laws were unconstitutional meant that they were required to uphold a practice they found morally wrong. Further, the Dred Scott ruling caused them to fear that the South was trying to impose slavery on an unwilling majority.

4. Accept reasoned answers.

5. South Carolina believed the union was a compact among states that could be withdrawn from if the national government became destructive of the purposes it was established to protect. Further, South Carolina believed that a state could decide on its own if that destructiveness had happened. Lincoln believed that secession was unconstitutional. A portion of the people could not destroy what the whole people had created.

Handout C: Lincoln’s First Inaugural Address

1. Perpetuity is implied in all constitutions; One party can break a contract, but all parties’ consent is required to lawfully rescind it; The Union is older than the Constitution; The Constitution was written to form a “more perfect union’’ but if one state can break it, the Union is actually less perfect than before the Constitution; No express provision of the Constitution has been violated.

2. Accept reasoned answers.

Handout D: Two Declarations

1. Independence: declaring that the colonies’ relationship to England was dissolved, and to tell the world the reasons why. Secession: announcing that South Carolina was once again a free and independent state, and to tell the world the reasons why.

2. Independence: after a long train of abuses has taken place. Secession: any one of the parties to the agreement.

3. Declaration: to evidence the violations of rights committed by the King. Secession: to evidence the violations of rights committed by the US.

4. Declaration: to point out that the colonists tried petitioning the King to bring an end to the violations. Secession: the future.

5. Declaration: The colonies are now free and independent states, assembled in Congress. Secession: a free and independent state.

The Resignation of President Nixon

Handout A: The Resignation of President Nixon

1. Ford was appointed by Nixon when Nixon’s former Vice President resigned.

2. Accept reasoned answers.

3. It was distressing for many to learn that the President of the United States had known about illegal activities, and had lied to cover them up. Many lost their faith in government.

4. Accept reasoned answers.

5. Sometimes a decision that seems difficult to endure at the time turns out to have been for the best, especially when emotions are high. Students may say that leaders must act with this longer-term vision in mind and that their actions should be judged in terms of their likely long term, and not necessarily immediate, effects.
APPENDIX A

THE DECLARATION OF INDEPENDENCE

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, 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 Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this 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>Signatories</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Georgia</strong></td>
<td>Button Gwinnett, Lyman Hall, George Walton</td>
</tr>
<tr>
<td><strong>North Carolina</strong></td>
<td>Joseph Hewes, William Hooper, John Penn</td>
</tr>
<tr>
<td><strong>South Carolina</strong></td>
<td>Thomas Heyward, Jr., Thomas Lynch, Jr., Arthur Middleton, Edward Rutledge</td>
</tr>
<tr>
<td><strong>Maryland</strong></td>
<td>Charles Carroll of Carrollton, Samuel Chase, William Paca, Thomas Stone</td>
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<td><strong>Virginia</strong></td>
<td>Carter Braxton, Benjamin Harrison, Francis Lightfoot Lee, Richard Henry Lee, Thomas Jefferson, Thomas Nelson, Jr., George Wythe</td>
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<tr>
<td><strong>Pennsylvania</strong></td>
<td>George Clymer, Benjamin Franklin, Robert Morris, John Morton, George Ross, Benjamin Rush, James Smith, George Taylor, James Wilson</td>
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<td><strong>Delaware</strong></td>
<td>Thomas McKean, George Read, Caesar Rodney</td>
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<td><strong>New York</strong></td>
<td>William Floyd, Francis Lewis, Philip Livingston, Lewis Morris</td>
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<td><strong>New Jersey</strong></td>
<td>Abraham Clark, John Hart, Francis Hopkinson, Richard Stockton, John Witherspoon</td>
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<td><strong>New Hampshire</strong></td>
<td>Josiah Bartlett, Matthew Thornton, William Whipple</td>
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<td><strong>Massachusetts</strong></td>
<td>Samuel Adams, John Adams, Elbridge Gerry, John Hancock, Robert Treat Paine</td>
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<td><strong>Rhode Island</strong></td>
<td>William Ellery, Stephen Hopkins</td>
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<tr>
<td><strong>Connecticut</strong></td>
<td>Samuel Huntington, Roger Sherman, William Williams, Oliver Wolcott</td>
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</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.

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

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

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

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

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

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

Article II

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

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

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with

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

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

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

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

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

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.
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, Danl 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 than 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.
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.
APPENDIX C

THE BILL OF RIGHTS

The 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 any person be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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

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

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

Amendment 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.
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FIELD TESTING TEACHERS

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