CivicsAlliance
from NATIONAL ASSOCIATION of SCHOLARS

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CONSTITUTION WEEK LESSON PLANS

For High School Teachers

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420 Madison Avenue, 7th Floor
New York, NY 10017

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Typesetting and Design by Chance Layton
Published April 2024

About Us

The Civics Alliance

The Civics Alliance is a national coalition of organizations and citizens dedicated to preserving and improving America's civics education and preventing the subornation of civics education to political recruitment tools.

We believe American students should comprehend aspects of American government such as the rule of law, the Bill of Rights, elections, elected office, checks and balances, equality under the law, trial by jury, grand juries, civil rights, and miliary service. American students should learn from these lessons the founding principles of the United States, the structure of our self-governing republic, the functions of government at all levels, and how our key institutions work.

The Civics Alliance works at whatever level of government offers the opportunity for constructive civics education reform. We provide model legislation and social studies standards for policymakers and informative materials to help grassroots activists and citizens push for civics education reform. We inform the public about why civics education needs to be reformed and how it should be done.

Learn more by visiting civicsalliance.org.

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Contents

Constitution Week

Constitution Day and Citizenship Day

The U.S. Constitution was signed on September 17, 1787. In honor of that day, Congress in 1952 named September 17 Citizenship Day. In 1956 it asked the president to proclaim the week beginning September 17 and ending September 23 each year as Constitution Week. In 2004, September 17 was renamed Constitution Day and Citizenship Day. The purpose of this day is to mark the signing of what is the supreme law of the land and encourage all citizens to honor and celebrate the rights and duties of U.S. citizenship. To help fulfill that purpose, the law requires all schools receiving federal funds to hold an educational program for their students each September 17. This lesson is part of a week of lessons on the Constitution produced by the National Association of Scholars in order to enable schools to meet the requirements of the law.

Lesson 1: The Constitution's Design

Lesson Overview and Student Learning Objectives

The purpose of this lesson is to introduce the U.S. Constitution as the basic framework for the federal government. The Constitution lays out a general set of provisions for organizing the government (while still leaving much of the organizational detail up to the Congress). The Background Essay for the lesson briefly sets the Constitution in its historical context and then focuses on one of the document's central features, the separation of powers. "Separation of powers" refers to the fact that the Constitution establishes three distinct branches of the national government, branches that nevertheless interact with one another in various ways. Separation of powers is only one of several key features of the Constitution that are central to a full understanding of the document. It is often linked to the concept of "checks and balances," but the two concepts are different. Later lessons will explore the concept of "checks and balances" and other key aspects of the document, along with several challenges the Founders faced in creating this framework and debating its merits during the ratification process.

When the lesson is completed:

- Students will be able to identify the three branches of the federal government as described in the first three Articles of the U.S. Constitution.

- In general terms, students will be able to explain what distinguishes the legislative, executive, and judicial functions of the three branches.

- Students in groups will discuss several questions about each branch, questions designed to help them understand certain key principles underlying that branch's rules.

- Students will be able to explain the importance of the concept of "separation of powers" in the overall design and purpose of the U.S. Constitution.

Teacher Directions

Before this class meets: Divide the class into three small groups. As homework or during an earlier class period, have the students read the Background Essay "The Constitution: Why a Separation of Powers?" Have students in one group read Article I of the Constitution (on the Legislative branch), have a second group read Article II (on the Executive branch), and have the third group read Article III (on the Judicial branch).

In class: Briefly discuss the three branches of the federal government and the overall structure or design of the Constitution. Ask each group to meet separately and identify the key powers granted to its branch and the limits the Constitution imposes on those powers. Give each group the appropriate Student Activity sheet. This asks them to record answers to a set of questions about the branch of government they have been assigned. Each group should summarize its discussion in a brief report to the class.

Extension Activity: As a possible follow-up to this lesson, ask students to read *Federalist 47.* Have students write a brief report on the arguments *Federalist 47* makes in favor of the idea of separation of powers. Encourage students to do some research into the influence of Montesquieu on the thinking of the Founders.

Suggested Grade Level:

12th grade

Time to Complete:

One class period plus prior reading as homework

Terms and Phrases to Understand
(In order of their appearance in the lesson material.)

- **confederation**—an alliance of states or nations that allows each member to govern itself while agreeing to some common rules and purposes.
- **impeachment**—in the government in particular, a charge of misconduct against a public official.
- **President pro tempore**—"pro tempore" is Latin meaning "for a time." In this case, a senator chosen to preside over the Senate temporarily when the Vice President is unable to.
- **quorum**—the minimum number of members of an official body that must be present for official business to be conducted.
- **concurrence**—being in agreement; unanimity.
- **emolument**—in the Constitution, any gift or payment resulting from employment or holding a position with the government.
- **duties, impost, and excises**—"duties and imposts" both refer to taxes on imports or exports; "excises" are taxes on the manufacture and sale of goods produced in the U.S.
- **naturalization**—the process by which U.S. citizenship is granted to a lawful permanent resident.
- **appropriation**—in government, the provision of money to carry out programs already enacted into law.
- **writ of habeas corpus**—in Latin, "habeas corpus" means "show me the body." A writ of habeas corpus is the demand to bring a detained person before a court to determine if that person's imprisonment is lawful.
- **bill of attainder**—a law punishing a specific person or group without trial.
- **ex post facto law**—in Latin, "ex post facto" means after the fact or after the deed. An ex post facto law is one made up after something is done in order to punish whoever did it.

- **cases in law and equity**—a case "in equity" asks the court to order someone to do something or not do something; a case "in law" asks the court for an award of damages to make up for injuries suffered.

- **original jurisdiction**—the right of a court to hear and decide a case for the first time before any other court can review the case.

- **appellate jurisdiction**—the right of a court to review, accept, or modify a lower court's decision.

Sources to Read

This lesson's Background Essay: "The Constitution: Why a Separation of Powers?"

The following are located in the "Sources for this Lesson" section and fully at the indicated link.

- **Source 1:** The U.S. Constitution, Article I. Also available from the National Archives at: https://www.archives.gov/founding-docs.

- **Source 2:** The U.S. Constitution, Article II. Also available from the National Archives at: https://www.archives.gov/founding-docs.

- **Source 3:** The U.S. Constitution, Article III. Also available from the National Archives at: https://www.archives.gov/founding-docs.

- **Source 4: Optional:** The Federalist Papers, No. 47. Also available from Yale Law School's Avalon Project at: https://avalon.law.yale.edu/18th_century/fed47.asp.

Standards Met by this Lesson.

American Birthright Learning Standards: Grade 12, No. 3; Grade 12, No. 13; Grade 12, No. 21; Grade 12; No. 22; Grade 12, No. 24.

Sources for Teacher Enrichment

- Joseph J. Ellis, *American Creation: Triumphs and Tragedies at the Founding of the Republic* (Vintage, 2008).
- Bruce Frohnen, *The American Republic: Primary Sources* (Liberty Fund, 2002).
- Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (Dover Thrift Editions, 2014). Also available online from Yale Law School's Avalon Project at: https://avalon.law.yale.edu/subject_menus/fed.asp.
- Donald S. Lutz, *The Origins of American Constitutionalism* (Louisiana State University Press, 1988.)
- Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (University Press of Kansas, 1985)
- David O. Stewart, *The Summer of 1787: The Men Who Invented the Constitution* (Simon & Schuster, 2008).
- Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (University of North Carolina Press, 1969, 1998.)

Background Essay

The Constitution: Why a Separation of Powers?

American Independence and the Articles of Confederation

On July 4, 1776, 13 British colonies signed the Declaration of Independence, breaking all of their political ties to Great Britain. The colonists then fought a successful revolutionary war to secure that independence. In taking these actions, many of them believed they were heralding a new golden age, an age of liberty and individual rights, and an end to tyranny.

Of course, the nation's Founders did not invent their ideas about political rights all on their own. Their thinking was based on a long tradition of liberty going back to ancient Greece and Rome. They looked back also to various European republics, to British traditions of common law, and to the idea of representative government, especially as it had evolved in the colonies themselves since the early 1600s. Perhaps most fundamental of all was their religious faith and the Bible. This was especially so given the strong focus on individual liberty they found in their religious traditions in the aftermath of the First Great Awakening of the 1730s and 1740s.

Still, the Founders also believed they were doing something unique, something that marked a glorious turning point in history. Nothing conveys this sense better than the words of the Declaration itself. It proclaimed as "self-evident" truths the proposition "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." Governments, they said, are established to "secure these rights" for individual citizens.

The colonists saw themselves as battling an unrestrained British tyranny. They vowed that any new American government must, above all, check tyranny and ensure liberty. Their first national government was designed with this aim. Moreover, theirs was a revolt of several independent sovereign states. Those states intended to remain independent. For that reason, also, the Founders intended their national government to be highly limited. It was designed to keep the states almost entirely independent.

The rules for this new government were called the Articles of Confederation. A "confederation" is a loose alliance of independent states united only to do a limited number of things. The Articles established a national legislature in which each state had one vote. This legislature could not impose taxes. The Articles provided for an extremely weak president. Border conflicts between states were hard to settle. Each state could tax goods from other states. Rising tensions between debtors and lenders in some states fueled the anger of poor backcountry farmers toward planter elites and merchants. Soon these problems and weaknesses began to worry many Americans.

The Constitutional Convention

It was important to protect liberty, the Founders agreed, but many of them also came to feel that an effective government needed "energy." That is, it needed the ability to act for the whole nation whenever matters of concern to the whole nation arose. In 1787, some of the most powerful political figures in America decided something drastic had to be done. Among them were George Washington, James Madison, Alexander Hamilton, and Benjamin Franklin. Along with 51 others these men met in Philadelphia. Officially, they had been chosen to revise the Articles of Confederation. Instead, they decided to start over and scrap the Articles. Their goal was a true federal union, one that would have real powers while also preserving many of the powers of the states. During that hot summer, they worked in secret, meeting, debating, and finally writing the U.S. Constitution, a new set of rules for the United States of America.

They worried that in many states the state legislature had nearly all the power. Elected legislatures were the most likely part of government to respond quickly to the will of the majority. For the most part, this was a good thing. However, many at the Constitutional Convention said that, by itself, it was close to the kind of pure democracy that often did not work well. What they feared was a tyranny of the majority that would trample on the rights of minorities. The other problem they saw in pure democracy was that it often produced disorderly governments divided by conflicts between small rival groups or factions.

Instead of pure democracy, the Convention sought to construct a complex republic. In such a republic, citizens would surely have a say in selecting public officials. However, a well-crafted republic, they said, would have ways to ensure that government served the true, long-term interests of the people, not the whims of some temporary majority. It would prevent a tyranny of the majority, that is, and protect the rights of the minority. One central way the Constitution tries to do that is through its complex system of separation of powers.

The Central Principle of the Constitution: A Separation of Powers

It is important to note the first three words of the Constitution's Preamble: "We the People." This indicates that the federal government gets its power from the people as a whole, not from the individual state governments. It also makes clear that the government does not give the people their rights. Instead, it is the people who grant the government its powers. And it is they who limit those powers in clear and specific ways. These limits enable the government to act forcefully while also protecting the rights and the liberty of the people.

One central way the Constitution keeps the government's powers limited is to divide them up among three distinct branches. These are the legislative branch (Congress) that makes the laws, the executive branch (the President) that enforces the laws, and the judicial branch (the courts) that interprets the laws and applies them to individual cases.

This design was meant to prevent any one person or group from gaining total control over the entire government. Each branch was to be on guard to make sure the other branches did

not take on its powers. The Founders also hoped this separation of powers would enable each branch to do only what it does best. The legislature would take time to debate and pass laws best reflecting the true interests of those who elect their representatives. The President would supply that decisive energy needed to enforce laws and take actions in the nation's interest. The judicial branch would have the independence needed to apply constitutional law fairly to the laws and acts of the government.

The readings and the activities for this lesson will give you a chance to look in more detail and depth at how these three branches work. As for the concept of separation of powers, keep in mind this is only one of several key concepts that guided the Founders. You will learn about several others in some of the lessons to follow.

Sources for this Lesson

Source 1: U.S. Constitution, Article I

The U.S. Constitution is available from the National Archives at: https://www.archives.gov/founding-docs.

> **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.[1] 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 chuse 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,[2] 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 of 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.[3]

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 chuse 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 chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December,[4] 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 Behaviour, 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 encreased 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 Defence 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 an 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, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9.
The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.[5]

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the 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 any Thing 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 it's 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 Controul 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.

ENDNOTES

1. Article I, Section 2, of the Constitution was modified by Section 2 of the 14th Amendment.

2. Article I, Section 3, of the Constitution was modified by the 17th Amendment.

3. Article I, Section 3, of the Constitution was modified by the 17th Amendment.

4. Article I, Section 4, of the Constitution was modified by Section 2 of the 20th Amendment. In addition, a portion of the 12th Amendment was superseded by Section 3 of the 20th Amendment.

5. Article I, Section 9, of the Constitution was modified by the 16th Amendment.

Source 2: U.S. Constitution, Article II

The U.S. Constitution is available from the National Archives at: https://www.archives.gov/founding-docs.

ARTICLE II

Section. 1.

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse 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 chuse the President. But in chusing 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 chuse from them by Ballot the Vice President.[1]

The Congress may determine the Time of chusing the Electors, and the Day on which

they shall give their Votes; which Day shall be the same throughout the United States.

No Persons 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.[2]

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2.
The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences 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.

ENDNOTES

1. Article II, Section 1 of the Constitution was superseded by the 12th Amendment, which was itself later partially superseded by Section 3 of the 20th Amendment.

2. Article II, Section 1, of the Constitution was affected by the 25th Amendment.

Source 3: U.S. Constitution, Article III

The U.S. Constitution is available from the National Archives at: https://www.archives.gov/founding-docs.

> ARTICLE III
>
> Section. 1.
>
> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which

shall not be diminished during their Continuance in Office.

Section. 2.
The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;[1] —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.

ENDNOTE

1. Article III, Section 2, of the Constitution was modified by Amendment 11.

Student Activity 1

Article I Group

Instructions to the Group: Have all group members read the four questions below. Share views about the questions and ask your teacher for any clarifications you feel you need. Have one student take notes on the group's answers to each question. Use these notes to help in giving a brief report on your answers to the entire class.

1. The Convention argued about how to organize the House and Senate. The Founders saw the House of Representatives as closest to the people. From Article I, what specific details about the way the House is chosen and organized do you think help explain this view?

2. The Founders expected the Senate to be more thoughtful and deliberate in making decisions for the nation. What about the rules for the Senate suggests they believed that?

See next page for additional questions.

1. Article 1, Section 8 limits the powers of Congress to several "enumerated" powers. Some of the biggest arguments about these powers ever since have had to do with the "necessary and proper" clause (see the last paragraph of Section 8). Why do you suppose that clause caused such controversy?

2. In what ways does the Constitution require Congress to cooperate with the President in order to do all of what its enumerated rights allow it to do?

In a brief talk to the class, summarize your group's answers to these questions.

Student Activity 2

Article II Group

Instructions to the Group: Have all group members read the four questions below. Share views about the questions and ask your teacher for any clarifications you feel you need. Have one student take notes on the group's answers to each question. Use these notes to help in giving a brief report on your answers to the entire class.

1. Read Article II, Section 1. From this section, do you think it is more accurate to say that the U.S. President is selected mainly by the nation's citizens as a whole, or mainly by the individual states acting separately? Explain your answer.

1. Article II vests (that is, officially grants) several powers to the U.S. President. Using the descriptions of those powers, explain how "executive" powers differ from "legislative" or "judicial" powers as described by the Constitution.

See next page for additional questions.

1. In times of declared war, the President is also designated Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States. Why do you think the Founders wanted a civilian, the President, in charge of military matters even in times of war?

2. The president must work with Congress in many ways to be able to fully exercise the powers the Constitution grants him. Explain what some of those ways are.

In a brief talk to the class, summarize your group's answers to these questions.

Student Activity 3

Article III Group

Instructions to the Group: Have all group members read the four questions below. Share views about the questions and ask your teacher for any clarifications you feel you need. Have one student take notes on the group's answers to each question. Use these notes to help in giving a brief report on your answers to the entire class.

1. The terms of office for judges as defined by Article III differ from all the other terms of office for legislators and the President. How do these terms differ, and why do you suppose the Founders wanted the terms for judges to differ in this way?

2. A few years after the Constitution went into effect, the Supreme Court declared an act of Congress "unconstitutional" and, therefore, unenforceable. What in Article III do you think could be understood as granting the judicial branch this power?

See next page for additional questions.

1. Some people at the time the Constitution was written said the judicial branch was the weakest of the three branches. Do you agree that this is the case? Why or why not?

2. Is the Judicial branch completely independent of Congress and the President? Or are the President and Congress needed in any way to help the judicial branch to do its job?

In a brief talk to the class, summarize your group's answers to these questions.

Lesson 2: The Constitution's Checks and Balances

Lesson Overview and Student Learning Objectives

The purpose of this lesson is to focus on the place and importance of the system of checks and balances in the U.S. Constitution. The Background Essay for this lesson distinguishes the concept of checks and balances from the separation of powers investigated in an earlier lesson. It touches on the thinking of James Madison and other Founders about the importance of checks and balances as a means of restraining governmental power and protecting the liberties central to the meaning and purpose of the American republic. The activity for the lesson introduces the concept of judicial review and asks students to look closely at one important Supreme Court case. The case raises questions in a dramatic way about the place of checks and balances in the functioning of the federal republic the Constitution brought into being.

When the lesson is completed:

- Students will be able to define the concept of checks and balances and will have a sense of what each of these two terms means.

- Students will be able to identify several of the key checks and balances embedded in the Constitution and will appreciate the importance of these features in establishing an effective yet limited government.

- Students will understand the concept of judicial review and will consider two sides in a case in which the Supreme Court acted to check the President's actions in order to maintain the separation of powers.

Teacher Directions

Before this class meets: As homework or during an earlier class period, have students read the Background Essay "The Constitution's Checks and Balances" and the three sources for this lesson. (Some of this reading could be done during class if it seems time will permit.) The Background Essay deals with the checks and balances the founders believed to be an essential feature of the U.S. Constitution. The three sources all have to do with the 1952 Supreme Court case *Youngstown Sheet & Tube Co. v. Sawyer*, which deals with Legislative versus Executive powers. The case also calls attention to the Supreme Court's power of judicial review.

In class: Briefly discuss all these readings and address any questions the students have about them. Then provide each student with a copy of the Student Activity sheet. This poses four questions about *Youngstown Sheet & Tube Co. v. Sawyer.* Have each student write brief answers to these questions. Leave 15 minutes or so for students to share their answers in an all-class discussion.

Extension Activity: Ask a small group of students to read and discuss *Federalist 51.* Have the group choose two or three short passages from it that best illustrate what Madison means by the phrase "ambition must be made to counteract ambition" Have the group prepare a brief report to the class explaining the importance of *The Federalist 51* to an understanding of why the Founders thought checks and balances so important a part of the U.S. Constitution.

Suggested Grade Level:

12th grade

Time to Complete:

One class period plus prior reading as homework

Terms and Phrases to Understand
(In order of their appearance in the lesson material.)

- **plaintiff**—person or entity that files a lawsuit against another in a court of law.
- **republic**—a government ruled by a group of representatives of the larger body of citizens.
- **veto**—the right of one branch of government to cancel or overrule the actions of another branch.
- **judicial review**—the ability of a court to review actions of the government to determine if they violate the U.S. Constitution.
- **null and void**—not legally valid or enforceable.
- **injunction**—a judicial order restraining a person or group from taking an action or an order telling a person or group to take a specific action.
- **statutory authorization**—a power given to an official or agency by a law passed by the legislature.

Sources to Read

This lesson's Background Essay: "The Constitution: Why a Separation of Powers?"

The following are located in the "Sources for this Lesson" section and fully at the indicated link.

- **Source 1:** Background Information on *Youngstown Sheet & Tube Co. v. Sawyer.*
- **Source 2:** From Justice Hugo Black's Majority Opinion in *Youngstown Sheet & Tube Co. v. Sawyer.* Available from Justia at: https://supreme.justia.com/cases/federal/us/343/579/.
- **Source 3:** Part of Justice Fred Vinson's Dissent in *Youngstown Sheet & Tube Co. v. Sawyer.* Available from Justia at: https://supreme.justia.com/cases/federal/us/343/579/.

- **Optional:** *The Federalist Papers*, *No. 51*. Available from Yale Law School's Avalon Project at: https://avalon.law.yale.edu/18th_century/fed51.asp.

Standards Met by this Lesson.

American Birthright Learning Standards: Grade 12, No. 3; Grade 12, No. 13; Grade 12, No. 21; Grade 12; No. 22; Grade 12, No. 24.

Sources for Teacher Enrichment

- M. E. Bradford, *Original Intentions: On the Making and Ratification of the United States Constitution* (University of Georgia Press, 1993).
- Bruce Frohnen, *The American Republic: Primary Sources* (Liberty Fund, 2002).
- Donald S. Lutz, *The Origins of American Constitutionalism* (Louisiana State University Press, 1988.).
- James Madison, *Federalist 51*, in *The Federalist Papers* (Dover Thrift Editions, 2014). Also available from Yale Law School's Avalon Project at: https://avalon.law.yale.edu/18th_century/fed51.asp.
- Charles de Montesquieu, *The Spirit of Laws* (Cambridge University Press, 1989).
- *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). Available from Justia at: https://supreme.justia.com/cases/federal/us/343/579/.

Background Essay

The Constitution's Checks and Balances

Americans often refer to their own government as a "democracy." However, the Founders were not in favor of democracy in any pure form. Looking back to Athens in ancient Greece they saw the direct rule of Athenian citizens as chaotic and conflict-ridden. Above all, they feared democracy would lead to a "tyranny of the majority." That is, a majority of citizens would trample on the rights of minorities and on the liberty of the individual. To prevent this, the Founders instead created a complex constitutional republic, not a democracy.

A republic does provide for some degree of indirect democracy. That is, citizens elect a small number of representatives to a legislature which then makes decisions for them. The expectation is this small group of representatives will be knowledgeable and will deliberate carefully in coming to decisions.

However, as bodies directly elected by the people, legislatures can still easily impose a tyranny of the majority. Americans at the time worried about this in part because of how powerful several state legislatures were after the Revolution. The Founders believed that determined majorities in some of these legislatures were in fact riding roughshod over the rights of others. One way they hoped to correct this was through the strict separation of powers into a legislative branch to make the laws, an executive branch (the President) to carry out the laws, and a judicial branch to enforce the laws through cases in the courts. This idea of separation of powers was not a new concept to the Founders at the time of the American Revolution. For example, they were long familiar with Baron Charles de Montesquieu's writings in the mid-1700s in *The Spirit of the Laws* on separation of powers.

In the Constitution, the powers of the three branches are not entirely separate. They overlap in many ways. For example, the President can report to Congress on the state of the nation, and he can recommend new laws for them to consider. In this and many other ways, the branches are able to work together. However, the Constitution also provides many ways by which one branch can prevent another branch from doing as it wishes. The phrase "checks and balances" refers to these ways.

One reason for these checks and balances is to make it hard for a tyranny of the majority to occur. However, there is another reason. The Founders did not only fear that a majority of citizens might abuse their power and impose a tyranny. They also feared that the government itself might impose a tyranny. As James Madison famously put it in *Federalist 51* (one of the essays in *The Federalist Papers*), "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself." The checks and balances were ways to do both things.

What were the "checks"? What were the "balances"?

The President can check the power of Congress by vetoing the laws it passes. However, Congress can pass a law despite a presidential veto with a two-thirds vote of both houses. Congress also has the authority to remove a president by impeaching him. The President negotiates treaties with other nations, but the Senate must approve them by a two-thirds vote. The President also appoints judges and top officials of his executive departments, but only with the advice and consent of the Senate. This appointing power gives both branches some control over the judicial branch. However, judges are very independent because of the "good behavior" tenure they enjoy, which means they can only be removed by impeachment for offenses such as criminal or treasonous acts. Politically divisive rulings do not meet this standard. If they wish, they can serve for life. This makes it easy for them to act independently in interpreting the laws. The Supreme Court has often checked the other branches by its power of judicial review—that is, its power of deciding whether acts by the President or Congress are constitutional and can be allowed to take effect.

When people speak of "checks and balances" they often think these two terms mean the same thing. However, some historians say the term "balances" refers to something else, to features that regulate the pace of change and keep the government from falling under the control of a suddenly aroused or angry majority. One such balance is maintained by the differing terms of office for the various parts of the federal government. Every two years, all members of the House of Representatives are elected to serve two-year terms. Senators serve six-year terms, and only one-third are elected every two years. This makes it hard for any suddenly arising movement to win over both the Senate and the House all at once. Meanwhile, Supreme Court Justices serving for life would also not be a part of any sudden majority seeking radical change. Senators are elected by entire states—and at first, they were chosen by state legislatures, not voters directly. (The 17th Amendment changed that in 1913.) Representatives are elected by much smaller districts. This means they are likely to respond to different groups of voters with different sorts of interests. These balancing factors make quick action by the entire government less likely. The Founders hoped this would produce a steadier, more thoughtful process of decision-making.

The Supreme Court has played a central role in making the Constitution's checks and balances work. It does this by a power that is implied though not clearly defined in the Constitution itself—the power of judicial review. This is the Court's power to decide whether a legislative or executive act violates the Constitution. If it decides the act does violate the Constitution, it declares that act "null and void." This means the act is not legally valid and cannot be carried out. In the Student Activity for this lesson, you will consider two alternative views of a case in 1952 in which the Court did just that by ruling against an action President Harry Truman took. According to the Court, that action did violate one of the central checks the Constitution imposes on the President.

Sources for this Lesson

Source 1: Background Information on *Youngstown Sheet & Tube Co. v. Sawyer*

Judicial review is a powerful "check" by which the Supreme Court can limit the power of the other branches. Among other things, it can keep them from violating the Constitution's separation of powers. A good example of this was a case brought before it in 1952. By then, thousands of American soldiers had been fighting in Korea for two years. They depended on huge supplies of weapons and equipment, most of which the defense industries could not build without a steady supply of steel. In the spring of 1952, the steel mill owners and the steel workers were locked in a major dispute over wages. In April, the union announced it would strike and shut down most of the major steel companies. President Truman decided that he had to act to prevent shortages he regarded as a terrible threat to the war effort and the nation's security. He therefore issued Executive Order 10340 directing his Secretary of Commerce Charles Sawyer to take over the steel mills and keep them running. Truman acted without asking Congress to authorize what he had done.

The steel companies went to court, and as a result a district judge issued an injunction ordering the government to return control of the plants to their owners. The government appealed the case, and the Supreme Court soon agreed to hear it. Youngstown Sheet and Tube Company was one of the steel companies bringing this case, which is therefore called *Youngstown Sheet & Tube Co. v. Sawyer*. By a 6-3 vote, the Supreme Court ruled that the president could not seize the steel mills without an act of Congress granting him that authority.

Source 2: From Justice Hugo Black's Majority Opinion in *Youngstown Sheet & Tube Co. v. Sawyer*

Usually when the Supreme Court rules in a case, one Justice writes a "majority opinion" explaining the reasons for the Court's ruling. Sometimes, other Justices will write "concurring opinions" agreeing with the ruling but making other points about it. If any Justices vote against the ruling, one or more of them may write a "dissenting opinion" explaining why they opposed the Court's ruling. Usually, all these opinions are long. They cite previous Court decisions and raise a great many points. This passage is just one small but key part of Justice Hugo Black's majority opinion for *Youngstown Sheet & Tube Co. v. Sawyer*. From the entire Supreme Court decision "Youngstown Sheet & Tube Co. v. Sawyer," 343 U.S. 579 (1952). The entire decision is available from Justia at: https://supreme.justia.com/cases/federal/us/343/579/.

> The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself. There is no statute that expressly authorizes the President to take possession of property as he did here. Nor is there any act of Congress to which our attention has been directed from which such a power

> can fairly be implied. Indeed, we do not understand the Government to rely on statutory authorization for this seizure. There are two statutes which do authorize the President to take both personal and real property under certain conditions. However, the Government admits that these conditions were not met, and that the President's order was not rooted in either of the statutes. The Government refers to the seizure provisions of one of these statutes (§ 201(b) of the Defense Production Act) as "much too cumbersome, involved, and time-consuming for the crisis which was at hand". . . .
>
> The contention is that presidential power should be implied from the aggregate of his powers under the Constitution. Particular reliance is placed on provisions in Article II which say that "The executive Power shall be vested in a President . . ."; that "he shall take Care that the Laws be faithfully executed", and that he "shall be Commander in Chief of the Army and Navy of the United States."
>
> The order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war. Such cases need not concern us here. Even though "theater of war" be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities.
>
> Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad.

Source 3: Part of Justice Fred Vinson's Dissent in *Youngstown Sheet & Tube Co. v. Sawyer*

Chief Justice Vinson wrote a long dissent. He stressed the then current dire wartime situation in which the President needed to act quickly to protect the nation. In his view, the President as Commander in Chief has the authority to do what Truman did. The passages here are a small portion of Justice Vinson's long dissent for *Youngstown Sheet & Tube Co. v. Sawyer*. After these passages, Vinson listed many actions other Presidents had taken before getting the approval of a specific act of Congress, including several actions taken by President

Roosevelt during the nation's involvement in World War II. From the entire Supreme Court decision *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). The entire decision is available from Justia at: https://supreme.justia.com/cases/federal/us/343/579/.

> The Plaintiffs [the steel companies bringing this case] do not remotely suggest any basis for rejecting the President's finding that any stoppage of steel production would immediately place the Nation in peril. . . . The Union and the plaintiffs bargained for 6 months with over 100 issues in dispute—issues not limited to wage demands, but including the union shop and other matters of principle between the parties. At the time of seizure, there was not, and there is not now, the slightest evidence to justify the belief that any strike will be of short duration. The Union and the steel companies may well engage in a lengthy struggle. Plaintiffs' counsel tells us that "sooner or later" the mills will operate again. That may satisfy the steel companies and, perhaps, the Union. But our soldiers and our allies will hardly be cheered with the assurance that the ammunition upon which their lives depend will be forthcoming—"sooner or later," or, in other words, "too little and too late". . . .
>
> A review of executive action demonstrates that our Presidents have on many occasions exhibited the leadership contemplated by the Framers when they made the President Commander in Chief, and imposed upon him the trust to "take Care that the Laws be faithfully executed." With or without explicit statutory authorization, Presidents have at such times dealt with national emergencies by acting promptly and resolutely to enforce legislative programs, at least to save those programs until Congress could act. Congress and the courts have responded to such executive initiative with consistent approval.

Student Activity

Instructions to the Student: Read the three sources provided for this assignment. Then read the four questions below. Share your views about the questions and ask your teacher for any clarifications you feel you need. Then in a few brief sentences, answer each question. Use these notes to help you to take part in an all-class discussion about the case of *Youngstown Sheet & Tube Co. v. Sawyer.*

1. Justice Black thinks President Truman violated one of the Constitution's key "checks" meant to limit the powers of each branch of the government. Explain which check he means and how he thinks the President violated it.

2. Justice Vinson in his dissent says a national emergency gives the president the right to act on his own to meet that emergency. He refers to two parts of the Constitution—one establishing the President as "Commander in Chief," and one saying the President must "take care that the laws be faithfully executed." Why do you think he believes these give the President the right to act as he did in this case?

3. Do you think Justice Black deals with the points Justice Vinson makes in his dissent? Explain your answer.

4. Do you think the Supreme Court's majority opinion in this case was correct, or do you think the dissenting opinion made the better argument? Explain your answer.

Lesson 3: A Federal Constitution

Lesson Overview and Student Learning Objectives

The purpose of this lesson is to explore the relationship of the state governments to the central government formed by the U.S. Constitution. The Background Essay for the lesson defines the concept of "federalism" as it applies to the kind of government the Constitution forms. That is, it is a system in which powers are divided up between the states and a strong federal government, but also shared among them as well. The essay then refers to the heated ratification debates in which Federalists and Anti-Federalists argued about whether the new Constitution gave too much power to the federal government. Student Activity 1 and Student Activity 2 for the lesson ask students in small groups to read and answer questions about two key participants in those debates.

When the lesson is completed:

- Students will be able to describe and explain the ways the Constitution divides power between the state and federal governments.

- Students will be able to explain why the issue of federalism and the balance of authority between the states and the federal government were central to the debates over the ratification of the Constitution.

- Students will discuss and evaluate the contrasting views of "Brutus" and James Madison regarding the Constitution and its likely relationship to the state governments.

Teacher Directions

Before this class meets: Divide the class into two or four small groups. As homework or during an earlier class period, have all students read the lesson's Background Essay "Federalism and the U.S. Constitution." Have the students from half of the small groups read Sources 1 and 2 for this lesson. Have the students from the other half of the groups read Sources 3 and 4. (Some of this reading could be done during class if it seems time will permit.) The Background Essay deals with the way the Constitution structures the relationship between the states and the federal government.

In class: Briefly discuss the Background Essay and address any questions the students have about it. Then provide one half of the student groups with copies of Student Activity 1. Provide the other half of the groups with Student Activity 2. These pose questions about the source readings assigned to each group. Group 1 is assigned a passage from *Brutus I* and from James Madison's *Federalist No. 45*. Group 2 is assigned another passage from *Brutus I* and from Madison's *Federalist No. 10*. Have each group discuss the questions and take notes on their answers. Leave 15 minutes or so for students to share their answers in an all-class discussion.

Suggested Grade Level:

12th grade

Time to Complete:

One class period plus prior reading as homework

Terms and Phrases to Understand
(In order of their appearance in the lesson material.)

- **confederation**—an alliance of states or nations that allows each member to govern itself while agreeing to some common rules and purposes.

- **federalism**—a political system in which the same territory is controlled by two levels of government.

- **naturalization**—the process by which U.S. citizenship is granted to a lawful permanent resident.

- **ratify**—to approve an act so as to make it legally binding.

- **the "necessary and proper" clause**—the last on the list of enumerated powers that Article I, Section 8 of the Constitution grants to Congress. It allows Congress to do what is necessary and proper actually to implement any of the other powers in a given set of circumstances.

- **duties, imposts, and excises**—"duties and imposts" both refer to taxes on imports or exports; "excises" are taxes on the manufacture and sale of goods produced in the U.S.

Sources to Read

This lesson's Background Essay: "Federalism and the U.S. Constitution"

The following are located in the "Sources for this Lesson" section and fully at the indicated link.

- **Source 1:** A passage from "Brutus I" available online from Teaching American History at: https://teachingamericanhistory.org/document/brutus-i/.

- **Source 2:** A passage from *Federalist No. 45* available online from Yale Law School's Avalon Project at: https://avalon.law.yale.edu/18th_century/fed45.asp.

- **Source 3:** A different passage from "Brutus I" available online from Teaching American History at: https://teachingamericanhistory.org/document/brutus-i/.

- **Source 4:** A passage from *Federalist No. 10* available online from Yale Law School's Avalon Project at: https://avalon.law.yale.edu/18th_century/fed10.asp.

Standards Met by this Lesson.

American Birthright Learning Standards: Grade 12, No. 3; Grade 12, No. 13; Grade 12, No. 17; Grade 12, No. 18; Grade 12, No. 21; Grade 12; No. 22; Grade 12, No. 24.

Sources for Teacher Enrichment

- Robert J. Allison and Bernard Bailyn, editors, *The Essential Debates on the Constitution: Federalist and Antifederalist Speeches and Writings* (Library of America, 2018).

- M. E. Bradford, Original Intentions: *On the Making and Ratification of the United States Constitution* (University of Georgia Press, 1993).

- Hillsdale College Politics Faculty, editors, *The U.S. Constitution A Reader* (Hillsdale College Press, 2012)

- Gordon S. Wood, *Power and Liberty: Constitutionalism in the American Revolution* (Oxford University Press, 2021).

- Gordon S. Wood, "The Articles of Confederation and the Constitution" (Humanities Texas, July/August 2010) available online at: https://www.humanitiestexas.org/news/articles/gordon-s-wood-articles-confederation-and-constitution.

Background Essay

Federalism and the U.S. Constitution

The American Revolution was a revolt of thirteen of Britain's North American colonies. They united in a Continental Congress for the purposes of fighting that revolutionary war. After the war, those now independent states adopted the Articles of Confederation as their governing set of rules. Throughout this time, most Americans fiercely defended the independence of the state they lived in. Many identified themselves more strongly as citizens of their state than as members of a unified nation. This spirit is reflected in the Articles, which left almost all power in the hands of the individual state legislatures. This led to many difficulties. Under the Articles, states often failed to provide taxes they had agreed to. The national government was often powerless to settle disputes between the states.

Soon, some of America's most admired leaders thought these chaotic conditions presented a danger to the survival of the nation. The states authorized these leaders to meet and revise the Articles. In sessions closed to the public, they met in Philadelphia in the summer of 1787 and instead decided to ignore the Articles and design an entirely new system. The U.S. Constitution was their answer. It provided for a much stronger national government that limited the powers of the states in several ways. However, it did not abolish their separate governments. It tried to combine state governments and the national government in a new way. The term for this new, middle way is "federalism."

The Founders opposed what they called a "unitary" government—that is, one all-powerful national government. However, they also opposed the loose "confederation" the Articles had created. In that looser government, nearly all power rested with the states. Those states only granted a few areas of control to the weak central government. What the Founders wanted was a middle way, a system in which powers could be divided between the states and a strong federal government, but also shared between them as well.

One way the powers were divided up was by limiting the federal government to tasks that were truly national in effect. Article I, Section 8, provides a list of all the powers granted to the federal government. For example, it has the power to declare war and raise armies, to regulate commerce with foreign nations and among the states, to establish a rule for naturalization, to coin money, to raise taxes, and to impose duties, excises, and imposts uniformly throughout the country. The Founders believed these powers in their very nature were ones that only a strong federal government should enforce for the entire country. The states, meanwhile, would continue to have all the powers needed to govern on the local and state level. Those powers included policing crime, education, rules on the ownership of property, the regulation of trade within the state, maintaining state roads, or taxing to support state needs.

This division of powers between the federal and the state governments is another one of the "checks and balances" that maintain our system of limited government.

However, the Founders did not want two entirely separate levels of government. They wanted the states to be involved in the way the federal government worked. So, for example, the states play a role in how both the House of Representatives and the Senate are selected. State population determines each state's number of House members. The Senate is made up of two Senators from each state, and originally the Constitution gave each state legislature the power to select its state's Senators. This representation by state meant that state concerns would likely be uppermost in the plans of many members of Congress. The Electoral College also makes the states central to the selection of the President. A set group of Electors for each state means that all the states, as states, have a say in who the next President will be.

The Constitutional Convention completed its work on September 17, 1787. It then submitted the U.S. Constitution to the public. Before it could go into effect, it had to be ratified by conventions in at least nine of the thirteen states. Those who supported the Constitution called themselves "Federalists." However, not everyone was happy with what the Convention had come up with. These opponents came to be labeled "Anti-Federalists." Vigorous debates between these two sides took place in each state.

Some of the most heated arguments were about the Constitution's likely effect on the independence of the states. For many Anti-Federalists, the Constitution seemed to give far too much power to the new federal government. Some felt that power could easily be used to eliminate the state governments. A related concern was about the huge territory over which the federal government would rule. The fear was that the federal government would be too remote and out of touch. Unlike the states, it would have to deal with a great many interest groups and factions, and these could cause constant turmoil and prevent the government from acting in a calm and thoughtful way. The Federalists devoted a good deal of energy to countering these two concerns as the states were preparing to hold conventions to vote on whether to ratify the new Constitution.

One well-known Anti-Federalist wrote several articles under the name Brutus. His first article addresses both issues—about the government's powers and about its great geographical extent. James Madison addressed these same issues in two separate essays included in *The Federalist Papers*. The student activities for this lesson will ask you to look more closely at the arguments these two men made regarding the federal government's powers, its size, and its likely relationship to the state governments.

Sources for this Lesson

Source 1: Brutus I on the danger of an all-powerful federal government

"Brutus" was an Anti-Federalist from the state of New York. He may have been Robert Yates, a New York delegate to the Constitutional Convention. The passage here is from the first of several articles Brutus published criticizing the proposed Constitution. Available online from Teaching American History at: https://teachingamericanhistory.org/document/brutus-i/.

> A power to make all laws, which shall be necessary and proper, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and definite, and may, for ought I know, be exercised in a such manner as entirely to abolish the state legislatures. Suppose the legislature of a state should pass a law to raise money to support their government and pay the state debt, may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this constitution, are the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of the different states to the contrary notwithstanding. —By such a law, the government of a particular state might be overturned at one stroke, and thereby be deprived of every means of its support." . . . .
>
> [T]he legislature of the United States are vested with the great and uncontrollable powers, of laying and collecting taxes, duties, imposts, and excises; of regulating trade, raising and supporting armies, organizing, arming, and disciplining the militia, instituting courts, and other general powers. And are by this clause invested with the power of making all laws, proper and necessary, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the state governments, and reduce this country to one single government. . . .

Source 2: James Madison in *Federalist 45* on the limited powers of the federal government

The Federalist Papers were a series of 85 essays written between October 1787 and May 1788 by James Madison, Alexander Hamilton, and John Jay, all using the pen name "Publius." The essays appeared in various New York state newspapers. Their purpose was to convince New Yorkers to support ratification of the proposed U.S. Constitution. This passage is from

Federalist 45, written by James Madison. Available online from Yale Law School's Avalon Project at: https://avalon.law.yale.edu/18th_century/fed45.asp.

> The State governments may be regarded as constituent and essential parts of the federal government; whilst the latter is nowise essential to the operation or organization of the former. Without the intervention of the State legislatures, the President of the United States cannot be elected at all. They must in all cases have a great share in his appointment, and will, perhaps, in most cases, of themselves determine it. The Senate will be elected absolutely and exclusively by the State legislatures. Even the House of Representatives, though drawn immediately from the people, will be chosen very much under the influence of that class of men, whose influence over the people obtains for themselves an election into the State legislatures. Thus, each of the principal branches of the federal government will owe its existence more or less to the favor of the State governments, and must consequently feel a dependence, which is much more likely to beget a disposition too obsequious than too overbearing towards them.
>
> The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected.
>
> The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments, in times of peace and security.

Source 3: Brutus I on the danger of a large republic

This is another passage from Brutus I, his first in a series of essays opposing ratification of the U.S. Constitution. Available online from Teaching American History at: https://teachingamericanhistory.org/document/brutus-i/.

> If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these increasing in such rapid progression as that of the whole United States. . . .

> In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government. The United States includes a variety of climates. The productions of the different parts of the union are very variant, and their interests, of consequence, diverse. Their manners and habits differ as much as their climates and productions; and their sentiments are by no means coincident. The laws and customs of the several states are, in many respects, very diverse, and in some opposite; each would be in favor of its own interests and customs, and, of consequence, a legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed of such heterogeneous and discordant principles, as would constantly be contending with each other.

Source 4: James Madison in Federalist 10 on the value of an extended republic

This passage is from another essay in *The Federalist Papers* by James Madison. It is from the last part of one of his best known of these essays, *Federalist 10*. Available online from Yale Law School's Avalon Project at: https://avalon.law.yale.edu/18th_century/fed10.asp.

> The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.
>
> Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,—is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments

render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

Student Activity 1

Student Group 1

Instructions to the Group: Have all group members read and discuss Source 1 and Source 2 and look over the questions below. Share views about the questions and ask your teacher for any clarifications you feel you need. Have one student take notes on the group's answers to each question. Use these notes to help in giving a brief report on your answers to the entire class.

1. In a few sentences, explain what Brutus I in Source 1 is worried about?

2. Why does he put so much emphasis on the "necessary and proper" clause at the end of Article I, Section 8 of the U.S. Constitution?

3. In a few sentences, summarize why Madison in Source 2 thinks that the fears Brutus expresses are wrong?

4. Which of these two sources makes the most convincing argument? Why do you think so?

5. Today, the federal government is far larger and stronger than it was in 1787. Considering our country today, were Brutus›s fears expressed in source 1 valid? Why or why not?

Use additional sheets for your notes as needed. Share your group's view with the class.

Student Activity 2

Student Group 2

Instructions to the Group: Have all group members read and discuss Source 3 and Source 4 and look over the questions below. Share views about the questions and ask your teacher for any clarifications you feel you need. Have one student take notes on the group's answers to each question. Use these notes to help in giving a brief report on your answers to the entire class.

1. In Source 3, Brutus says "a free republic cannot succeed" in a country spread over a territory as huge as the United States in 1787. In a few sentences, sum up the specific reasons he gives for this belief.

2. Brutus says a large republic would result in "a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other." Does Madison (in Source 4) disagree with this prediction? Or does he not believe a "constant clashing of opinions" would be all that serious a problem? Explain your answer.

3. Madison seems most worried about a government controlled by "the secret wishes of an unjust and interested majority." Why does he think this danger would be less likely to arise in a republic extended over a large area?

4. Think about the ways America has changed since 1787, in extent, population, number of states, technology, industry, society, and size and purposes of government. Considering these changes, whose views seem more valid today, those of Brutus or those of Madison?

Use additional sheets for your notes as needed. Share your group's view with the class.

Lesson 4: The Great Compromises: Were They Necessary?

Lesson Overview and Student Learning Objectives

The purpose of this lesson is to look at and discuss some of the key compromises the Constitutional Convention made, in particular with regard to the problem of slavery. The Background Essay focuses on the way slavery was becoming a contended and divisive issue. The essay and the sources focus on the divisions over slavery within the Convention and the compromises it arrived at in the form of key provisions in the Constitution. The lesson then asks students to consider two contrasting assessments of what the Convention accomplished with regard to slavery.

When the lesson is completed:

- Students will be able to identify some of the sources of growing anti-slavery sentiment in colonial America in the 1700s.

- Students will be able to identify and explain three key compromises the Constitutional Convention made regarding slavery.

- Students will evaluate and debate two alternative opinions about the work the Convention did in confronting the problem of slavery in American life.

Teacher Directions

Before this class meets: Distribute the Background Essay "The Constitution, the Compromises, and the Problem of Slavery," along with the seven sources for this lesson. As homework or during an earlier class period, have all students read the Background Essay and the sources. The Background Essay deals with the way the Constitutional Convention dealt with the problem of slavery in American life.

In class: Briefly discuss the Background Essay and address any questions the students have about it along with the seven brief sources for the lesson. Then give students the two-page Student Activity assignment. Ask students to read the two "Point of View" answers to the Essential Question. Using the second page of the Student Activity, have students take notes on their answers to the questions asked. Leave 15 minutes or so for students to share their answers in an all-class discussion.

Extension Activity: In the early 1800s, two key abolitionist leaders, William Lloyd Garrison and Frederick Douglass, argued about whether or not the Constitution was a pro-slavery or anti-slavery document. Students should write a brief essay explaining the different views of these two men. Have the students base their essay on the following two sources:

William Lloyd Garrison in his magazine *The Liberator*, December 29, 1832, available online from Teaching American History at: https://teachingamericanhistory.org/document/on-the-constitution-and-the-union-2/.

Frederick Douglass in an 1860 speech in Glasgow Scotland, available online from Teaching American History at: https://teachingamericanhistory.org/document/the-constitution-of-the-united-states-is-it-pro-slavery-or-anti-slavery/#sthash.Skum6u9J.cQuSr5qX.dpuf.

Suggested Grade Level:

12th grade

Time to Complete:

One class period plus prior reading as homework

Terms and Phrases to Understand
(In order of their appearance in the lesson material.)

- **compromise**—an agreement in a dispute reached by each side giving up some of what it wants.
- **bicameral**—referring to a legislative body having two branches or chambers.
- **denominational**—relating to denominations, groups within one religion that have slightly different beliefs.
- **unalienable**—or inalienable. Something that cannot be given away or taken away.
- **fugitive**—a person who has escaped and is in hiding.
- **apportion**—to divide up or allocate.
- **execration**—an extremely angry denouncement or curse.
- **amor patria**—In Latin, love of one's country

Sources to Read

This lesson's Background Essay: "The Constitution, the Compromises, and the Problem of Slavery"

The following are located in the "Sources for this Lesson" section and fully at the indicated link.

- **Source 1:** Three sections from the U.S. Constitution. Available from the National Archives at: Archives at: https://www.archives.gov/founding-docs
- **Source 2:** Passages from Thomas Jefferson's *Notes on the State of Virginia*: Queries 18 and 19. Available online from Teaching American History at: https://teachingamericanhistory.org/document/notes-on-the-state-of-virginia-2/.
- **Source 3:** Remarks by Gouverneur Morris from *The Debates in the Federal Convention of 1787*, reported by James Madison, available online from The Avalon Project at: https://avalon.law.yale.edu/18th_century/debates_808.asp.

- **Source 4:** Remarks by Oliver Ellsworth from *The Debates in the Federal Convention of 1787*, reported by James Madison, available online from The Avalon Project website of Yale University's Lillian Goldman Law Library at: https://avalon.law.yale.edu/18th_century/debates_822.asp.

- **Source 5:** Remarks by General Charles Cotesworth Pinckney from *The Debates in the Federal Convention of 1787*, reported by James Madison, available online from The Avalon Project website of Yale University's Lillian Goldman Law Library at: https://avalon.law.yale.edu/18th_century/debates_822.asp.

- **Source 6:** Remarks by Rawlins Lowndes from *Debates which Arose in the House of Representatives of South-Carolina: On the Constitution of the United States*, published by A. E. Miller, 1831, p. 19, and available online at Debates which Arose in the House of Representatives of South-Carolina: https://www.google.com/books/edition/Debates_which_Arose_in_the_House_of_Repr/f06EhGPTz74C?q=&gbpv=1&bsq=jealousy%20of%20our%20importing%20negroes#f=false.

- **Source 7:** Passage by Luther Martin in "Genuine Information VIII," available online from Teaching American History at: https://teachingamericanhistory.org/document/luther-martin-genuine-information-viii/.

Standards Met by this Lesson.

American Birthright Learning Standards: Grade 12, No. 3; Grade 12, No. 13; Grade 12, No. 21; Grade 12; No. 22; Grade 12, No. 24.

Sources for Teacher Enrichment

- Robert J. Allison and Bernard Bailyn, editors, *The Essential Debates on the Constitution: Federalist and Antifederalist Speeches and Writings* (Library of America, 2018).

- Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Belknap Press of Harvard University Press, 1998).

- Hillsdale College Politics Faculty, editors, *The U.S. Constitution A Reader* (Hillsdale College Press, 2012)

- John P. Kaminski, *A Necessary Evil?: Slavery and the Debate Over the Constitution* (Madison House, 1995).

- Sean Wilentz, *No Property in Man: Slavery and Antislavery at the Nation's Founding* (Harvard University Press, 2018).

Also, the two articles suggested for the Extension Activity:

- William Lloyd Garrison in his magazine *The Liberator*, December 29, 1832, available online from Teaching American History at: https://teachingamericanhistory.org/document/on-the-constitution-and-the-union-2/.

- Frederick Douglass in an 1860 speech in Glasgow Scotland, available online from Teaching American History at: https://teachingamericanhistory.org/document/the-constitution-of-the-united-states-is-it-pro-slavery-or-anti-slavery/#sthash.Skum6u9J.cQuSr5qX.dpuf.

Background Essay

The Constitution, the Compromises, and the Problem of Slavery

The Constitution was not the creation of a fully united and single-minded group of delegates. Given the differences of viewpoint among them, it is amazing they produced such a carefully structured plan of government. However, to get to that agreement, they had to compromise over many things. Some of them were minor. A few of them were not minor.

Most important was "the Great Compromise." It had to do with how each state would be represented in Congress. States with large populations wanted the number of each state's representatives to be based on that state's population. Smaller states feared that would allow more populous states to dominate in the government. They wanted each state to have the same number of representatives. The solution to the dispute was to create a bicameral legislature (one with two chambers or houses) and provide different ways of allotting members to each house. The upper house, the Senate, would have two Senators per state. In the lower house, the House of Representatives, each state would have a varying number of representatives in proportion to its population.

This satisfied the different views of the larger and the smaller states. However, the compromise also included a provision dealing with another, even more divisive issue—slavery.

Slavery had been a part of the British colonies from their start. In fact, slavery had existed in most societies throughout history. It is unlikely anyone wanted to be a slave, but for the most part slavery was seen as an ordinary and unavoidable feature of the economic and social order. Until the American Revolution, it existed in all thirteen colonies. It was especially crucial in the plantation cultivation of rice, tobacco, and other commercial crops in the South.

It is not surprising then that a number of Southern delegates in Philadelphia in 1787 wanted to be sure the Constitution would protect their slave systems. They had reason to worry. Attitudes about slavery had begun to shift. In America and Great Britain especially, small groups had begun to speak out against slavery as profoundly immoral. Two powerful forces help explain this turning point. One was the huge importance of the Bible and the Christian religion, especially as understood by the dissenting Protestant versions of Christianity. The other force was the new emphasis on reason, tolerance and science known as the "Enlightenment."

Starting in the late 1600s with small groups of Quakers, various religious groups began speaking out against slavery. They based their views on the Bible's strong emphasis on the equal sanctity of every individual soul. Many began to see that to choose to live according to God's plan, each individual had to be free to make that choice. During the 1730s and '40s, a great religious revival known as the Great Awakening deepened this stress on the liberty of the individual. It also broke down denominational barriers and spread a sense of the common bonds uniting all people, including, some said, the slaves. Adding to this spirit was the Enlightenment's stress on universal reason, natural law, and toleration of ideas and opinions.

This mix of new ideas produced real political change during the American Revolution. Nothing better illustrates this combination of religious awakening and a new stress on reason and natural law than the Declaration of Independence. First, there is its reference to "the laws of nature and of nature's God." Then the assertion that "all men are created equal, that they are endowed by their Creator with certain unalienable rights." In other words, rights are natural, unalienable, and granted by God, not the government.

These ideas undermined the notion that some human beings could own others as slaves. Of course, not everyone saw this, but growing numbers did. In the years between the Declaration in 1776 and the Constitutional Convention in 1787, most of the northern states abolished slavery or passed gradual emancipation laws to end it in time. These states were among the first formal governments to do so by law anywhere on earth. Under the Articles of Confederation, the Northwest Ordinance banned slavery from any new states formed out of the territories west of the Appalachian Mountains and north of the Ohio River. Still, these were only the first steps on a long road ahead. Defenders of slavery were still a powerful force in American life.

The Constitutional Convention had its share of defenders of slavery. It also included many critics of slavery, including some who owned slaves but spoke openly of slavery's evils. However, the delegates were there to create a framework for all thirteen states. Many of them feared that a strong stand against slavery might lead several Southern states to leave the union. Moreover, many delegates expected, or hoped, that slavery would fade away in time. And so, they compromised.

Most important was the "three-fifths compromise." It was a part of the "Great Compromise" referred to earlier. Each state would get numbers in the House of Representatives proportional to its population. For this purpose, Southern delegates wanted each slave counted as a full person. This would increase the South's numbers overall in the House. At the same time, they did not want slaves counted at all in deciding how much direct taxes a state owed. Many Northern delegates objected. After all, they asked, if slaves were property, not citizens, why should they be counted at all? The three-fifths rule was the compromise the delegates accepted. This rule required that for every five slaves, only three would be counted for purposes of representation and taxation.

Another key compromise had to do with the slave trade. Many Southern delegates wanted no limits placed on it. Other delegates wanted it banned immediately. The compromise was to give Congress the right to ban it, but not until 1808. This delay upset delegates opposed to the slave trade, but it did establish that Congress had the right to make laws about slavery. And Congress did ban the slave trade on the first day of 1808. A third compromise had to do with capturing fugitive slaves. It required that any escaping "person held to service . . . shall be delivered up on claim of the party to whom such service or labor may be due."

It is true the Convention avoided fully confronting the challenge of slavery. However, its uneasiness about slavery was itself evidence of how attitudes were changing. For example, the Founders avoided using the word "slave" anywhere in the document. Instead, the words "persons held to service" were used. In the case of the fugitive slave provision, such persons

were not described as held to service under any federal law but under the laws of that person's state.

Was this care about language just due to embarrassment, or was it a way to keep the Constitution itself from fully supporting the slave system of any state? How to answer this question and how best to evaluate the Constitution and the problem of slavery will be the focus of the Student Activity for this lesson.

Sources for this Lesson

Source 1: Three slavery compromises in the U.S. Constitution.

Three sections from the U.S. Constitution. Available from the National Archives at: https://www.archives.gov/founding-docs.

> Art. I, sec. 2. 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.
>
> Art. I, sec. 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.
>
> Art. 4, sec. 2. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Source 2. Thomas Jefferson—From *Notes on the State of Virginia*

Jefferson was the main author of the Declaration of Independence and the third U.S. President. He owned a large plantation with many slaves, very few of whom he ever freed. And yet, along with the Declaration's ideals, he wrote some of the most powerful criticisms of the institution of slavery. These three passages are from his *Notes on the State of Virginia*, published in 1782. Available online from Teaching American History at: https://teachingamericanhistory.org/document/notes-on-the-state-of-virginia-2/.

> The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this, and learn to imitate it; for man is an imitative animal. This quality is the germ of all education in him. From his cradle to his grave, he is learning to do what he sees others do. . . .
>
> And with what execration should the statesman be loaded, who permitting one half the citizens thus to trample on the rights of the other, transforms those into despots, and these into enemies, destroys the morals of the one part, and the amor patriae of the other. For if a slave can have a country in this world, it must be any other in preference to that in which he is born to live and labor for another. . . .
>
> And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with his wrath? Indeed, I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever. . . . The Almighty has no attribute which can take side with us in such a contest.

Source 3. Gouverneur Morris of New York

Gouverneur Morris was one of the wealthiest men in America. In 1787, he represented New York in the Constitutional Convention, where he was one of the most forceful opponents of slavery. In this passage, he speaks against allowing the slave states to count slaves for purposes of representation in Congress. The passage is from *The Debates in the Federal Convention of 1787*, reported by James Madison, available online from The Avalon Project at: https://avalon.law.yale.edu/18th_century/debates_808.asp.

> Mr. Govr. MORRIS. He never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of heaven on the states where it prevailed. Compare the free regions of the Middle States, where a rich and noble cultivation marks the prosperity and happiness of the people, with the misery and poverty which overspread the barren wastes of Virginia, Maryland and the other states having slaves. . .. Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them citizens and let them vote. Are they property? Why then is no other property included? The houses in this city [Philadelphia] are worth more than all the wretched slaves which cover the rice swamps of South Carolina. The admission of slaves into the representation when fairly explained comes to this: that the inhabitant of Georgia and South Carolina who goes to the coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest

> connections and damns them to the most cruel bondages, shall have more votes in a government instituted for protection of the rights of mankind, than the citizen of Pennsylvania or New Jersey who views with a laudable horror, so nefarious a practice.

Source 4. Oliver Ellsworth, a delegate from Connecticut, August 22, 1787

In the Convention, Oliver Ellsworth of Connecticut replied to Virginia delegate George Mason, who wanted a total ban on the slave trade. Both men opposed slavery, but Ellsworth wanted to compromise on it. He may have suspected that Mason, a Virgina slave owner, had selfish reasons for opposing the slave trade. He hints at those reasons in this passage—that Virginians and Marylanders would profit from a ban on importing foreign slaves, since they would be the suppliers in the domestic slave trade. From *The Debates in the Federal Convention of 1787*, reported by James Madison, available online from The Avalon Project website of Yale University's Lillian Goldman Law Library at: https://avalon.law.yale.edu/18th_century/debates_822.asp.

> Mr. ELSWORTH. As he had never owned a slave could not judge of the effects of slavery on character. He said however that if it was to be considered in a moral light we ought to go farther and free those already in the country. As slaves also multiply so fast in Virginia and Maryland that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we go no farther than is urged, we shall be unjust towards South Carolina and Georgia. Let us not intermeddle. As population increases poor laborers will be so plenty as to render slaves useless. Slavery in time will not be a speck in our Country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts.

Source 5. General Charles Cotesworth Pinckney of South Carolina, August 22, 1787

Charles Pinckney and General Charles Cotesworth Pinckney both were delegates for South Carolina at the Constitutional Convention. They were part of a large family of wealthy slaveholders in that state. In this passage, General Pinckney spoke in favor of the slave trade. From *The Debates in the Federal Convention of 1787*, reported by James Madison, available online from The Avalon Project website of Yale University's Lillian Goldman Law Library at: https://avalon.law.yale.edu/18th_century/debates_822.asp.

> General PINCKNEY declared it to be his firm opinion that if himself and all his colleagues were to sign the Constitution and use their personal influence, it would be of no avail towards obtaining the assent of their constituents. South Carolina and Georgia

> cannot do without slaves. As to Virginia she will gain by stopping the importations. Her slaves will rise in value, and she has more than she wants. It would be unequal to require South Carolina and Georgia to confederate on such unequal terms. . .. He contended that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; the more consumption also, and the more of this, the more of revenue for the common treasury.

Source 6. Rawlins Lowndes defends slavery, January 16, 1788

Once the Constitutional Convention completed its work, each state legislature held a convention to debate the proposed Constitution. On January 16, 1788, Rawlins Lowndes criticized the document in a meeting of South Carolina's House of Representatives. This passage provides an account of Representative Lowndes' speech. The account can be found in *Debates which Arose in the House of Representatives of South-Carolina: On the Constitution of the United States*, published by A. E. Miller, 1831, p. 19, and available online at: https://www.google.com/books/edition/Debates_which_Arose_in_the_House_of_Repr/f06EhGPTz74C?q=&gbpv=1&bsq=jealousy%20of%20our%20importing%20negroes#f=false.

> In the first place, what cause was there for jealousy of our importing negroes? Why confine us to twenty years, or rather why limit us at all? For his part, he thought this trade could be justified on the principles of religion, humanity, and justice; for certainly to translate a set of human beings from a bad country to a better, was fulfilling every part of these principles. But they don't like our slaves, because they have none themselves, and therefore want to exclude us from this great advantage. Why should the Southern States allow of this, without the consent of nine states?

Source 7. Luther Martin's "Genuine Information VIII, January 22, 1788."

Luther Martin was a delegate to the Convention from Maryland. He left half-way through. Later, he published several newspaper articles critical of the Constitution, which he printed as a pamphlet titled *The Genuine Information*. This passage is from "Genuine Information VIII." It is available online from Teaching American History at: https://teachingamericanhistory.org/document/luther-martin-genuine-information-viii/.

> It was urged that by this system, we were giving the general government full and absolute power to regulate commerce, under which general power it would have a right to restrain, or totally prohibit the slave trade. It must appear to the world absurd and disgraceful to the last degree, that we should except from the exercise of that power,

> the only branch of commerce, which is unjustifiable in its nature, and contrary to the rights of mankind. That on the contrary, we ought rather to prohibit expressly in our constitution, the further importation of slaves; and to authorize the general government from time to time, to make such regulations as should be thought most advantageous for the gradual abolition of slavery, and the emancipation of the slaves which are already in the States.
>
> That slavery is inconsistent with the genius of republicanism, and has a tendency to destroy those principles on which it is supported, as it lessens the sense of the equal rights of mankind, and habituates us to tyranny and oppression.

Student Activity

Instructions to the Student: Briefly review the Background Essay and the seven sources for this lesson. Then read the Essential Question here and the two "Point of View" paragraphs that answer it. Use the second page of this Student Activity to record your own answers to this question and some additional questions. Use your answers to help you take part in a class discussion about slavery and the Founders.

Essential Question: Were the Constitution's compromises over slavery a reasonable solution to the problem of slavery in American life at that time?

Point of View 1: "Yes."

Many delegates to the Constitutional Convention spoke out forcefully against slavery. However, slavery was deeply embedded in the economy and society. The Founders were caught in a system they did not create. To keep the union together, they compromised. The three-fifths rule increased the South's representation in Congress. The other compromises protected slavery as well. They were a necessary price to pay to keep the Southern states in the union. Had the South formed its own separate nation, its slave system might well have lasted longer and spread farther. Nevertheless, the Constitution never accepted slavery as legitimate. Keeping the word "slave" out served a purpose. Madison reported that he and others "thought it wrong to admit in the Constitution the idea that there could be property in men." The right to ban the slave trade after 1808 established the federal government's right to limit slavery or stop its expansion into new territories. The Founders created a new political order based on the principles of equality and liberty. These would increasingly put the nation at odds with slavery and in time put an end to it. It is too easy to judge the past from a comfortable distance. It is better to understand how people in the past understood their circumstances and what this enabled them to do.

Point of View 2: "No."

Many Americans at that time knew slavery to be evil. Nothing makes that clearer than Jefferson's forceful condemnation of slavery in his *Notes on the State of Virginia*. Yet unlike Washington, Jefferson could not even free his slaves in his will. Apparently, racial prejudice was still too strong. As for the Constitution, the compromises went too far. Many delegates spoke out against slavery, but most of them were too ready to give in to the Southern slaveholders. They believed it was more important to keep all the states united. Meanwhile, the compromises gave the South far too much power. The three-fifths clause made the South stronger by increasing its representation in Congress and the Electoral College. Allowing the slave trade to continue for 20 years only added more slaves to slave state populations. The fugitive slave clause made it too easy to keep slaves under control. In the end, these concessions

to Southern opinion did no good at all. Slavery prevented any true national unity. By 1860 it would split the nation apart in a bloody civil war. The Founders should have understood this better than they did. If we can understand this clearly now, they should have at the time.

Slavery and the Constitution: Notes for an In-Class Discussion

Take a few brief notes in response to each of the following questions. Use your notes to help you take part in an all-class discussion about slavery and the Constitution.

1. Of the seven sources for the lesson, which two best support Point of View 1? Explain your choices.

2. Of the seven sources for the lesson, which two best support the Point of View 2? Explain your choices.

3. Which "Point of View" do you think provides the best answer to the Essential Question asked? Why?

Lesson 5: The Ratification Debates and the Bill of Rights

Lesson Overview and Student Learning Objectives

The purpose of this lesson is to look at the key debates during the battles over ratification of the Constitution, 1787-1788. The focus is on the views of the Anti-Federalists and their arguments with Federalists over the need for a bill of rights. The Background Essay provides what students need to understand what a bill of rights is and why it became a central issue in the arguments between Federalists and Anti-Federalists. The student activity for the lesson asks students to analyze the lesson's primary sources and use them to construct a brief essay addressing a Document Based Question about the debate over the bill of rights.

When the lesson is completed:

- Students will be able to explain what a bill of rights is, what the provisions are of the one now part of the U.S. Constitution, and the process by which that Bill of Rights was added to the Constitution.

- Students will be able to explain several of the reasons key Federalists and Anti-Federalists did or did not support the need for a bill of rights.

- Students will evaluate and write a brief essay explaining the alternative opinions expressed in the sources as to whether the Constitution needed to have a bill of rights.

Teacher Directions

Before this class meets: Distribute the Background Essay "The Constitution, the Ratification Debates, and the Bill of Rights." Also distribute the five sources for this lesson. As homework or during an earlier class period, have all students read the Background Essay and the sources. The Background Essay deals with the ratification of the U.S. Constitution and the arguments for and against it by Federalists and Anti-Federalists.

In class: Briefly discuss the Background Essay and address any questions the students have about it along with the five brief sources for the lesson. Then give students the two-page Student Activity assignment. It asks each student to take some notes on Sources 2-5 and use those notes to write a brief (2-3 pages) DBQ essay answering two questions. Teachers may want to give students extra time in addition to this class period to complete their essays. Perhaps display some or all of the students' essays for others to read.

Extension Activity: For a long time, the Bill of Rights' protections applied only to actions by the federal government. They did not bind the states until well after the 14th Amendment was ratified in 1868. Have a small group of students read about the 14th Amendment and the process by which key Bill of Rights provisions were later applied to the states (a process known as "incorporation"). Ask them to present their findings to the class and lead a discussion about how the significance of the Bill of Rights has changed in American history over time.

Suggested Grade Level:

12th grade

Time to Complete:

One class period plus prior reading as homework

Terms and Phrases to Understand (In order of their appearance in the lesson material.)

- **ratify**—to approve an act so as to make it legally binding.
- **Magna Carta**—"The Great Charter," an agreement in 1215 between England's King John and his barons limiting the king's powers.
- **enumerated**—Specifically named or listed; individually numbered.
- **establishment of religion**—A religion recognized by law as the official religion; also, government actions that favor one religion over another.
- **warrant**—In this case, a legal document authorizing officials to make an arrest, search premises, or carry out some other action.
- **probable cause**—In this case, having reasonably trustworthy information that a crime is being committed.
- **indictment of a grand jury**—In this case, an indictment is the legal charge against someone for a crime. A grand jury decides if there are good reasons to charge someone with a crime.
- **due process of law**—Applying all legal rules to a case so that the rights of the persons involved are respected.
- **common law**—the part of English law based on custom and past judicial decisions rather than statutes.

Sources to Read

This lesson's Background Essay: "The Constitution, the Ratification Debates, and the Bill of Rights."

The following are located in the "Sources for this Lesson" section and fully at the indicated link.

- Source 1: The Bill of Rights, which comprises the first ten amendments to the U.S. Constitution. Available online from the Bill of Rights Institute at: https://billofrightsinstitute.org/primary-sources/bill-of-rights.

- Source 2: A passage from "An Old Whig IV," which is an article from the *Independent Gazetteer* in Philadelphia, October 27, 1787, available from the Center for the Study of the American Constitution at: https://csac.history.wisc.edu/document-collections/constitutional-debates/bill-of-rights/.

- Source 3: A passage from "Federal Farmer II," an essay in *The Essential Debate on the Constitution: Federalist and Antifederalist Speeches and Writings*, eds., Bernard Bailyn Robert Allison. Library of America, 2018, pp. 74-79. Available online from Teaching American History at: https://teachingamericanhistory.org/document/federal-farmer-ii/.

- Source 4: A passage from *Federalist 84*, by Alexander Hamilton. *Federalist 84* is available online from "The Avalon Project" website of Yale University›s Lillian Goldman Law Library at: https://avalon.law.yale.edu/18th_century/fed84.asp.

- Source 5: Noah Webster, "The Absurdity of a Bill of Rights," an essay in *The Essential Debate on the Constitution: Federalist and Antifederalist Speeches and Writings*, eds., Bernard Bailyn Robert Allison. Library of America, 2018, pp. 177-180. Available online from Library of America at: https://storyoftheweek.loa.org/2017/03/on-absurdity-of-bill-of-rights.html.

Standards Met by this Lesson.

American Birthright Learning Standards: Grade 12, No. 3; Grade 12, No. 13; Grade 12, No. 21; Grade 12; No. 22; Grade 12, No. 24.

Sources for Teacher Enrichment

- Robert J. Allison and Bernard Bailyn, editors, *The Essential Debates on the Constitution: Federalist and Antifederalist Speeches and Writings* (Library of America, 2018).

- Merrill Jensen, John P. Kaminski, and Gaspare J. Saladino, *The Documentary History of the Ratification of the Constitution* (Wisconsin Historical Society Press, 1976-2009).

- John P. Kaminski and Richard Leffle, *Federalists and Antifederalists: The Debate Over the Ratification of the Constitution* (Rowman & Littlefield Publishers, 1998).

- Pauline Maier, *The People Debate the Constitution, 1787-1788* (Simon & Schuster, 2010)

- Richard Labunski, *James Madison and the Struggle for the Bill of Rights* (Oxford University Press, 2006).

Background Essay

The Constitution, the Ratification Debates, and the Bill of Rights

The Constitutional Convention met from May 25 to September 17, 1787. During that time, its sessions in Philadelphia's Independence Hall were closed to the public. Few Americans had any idea what the delegates were doing. When those delegates finished, they presented the Constitution to the country in its completed form. However, they did not force Americans to accept it, no questions asked. They urged them to read, discuss, and decide whether to accept it. The Constitution itself provided the way to do this. Each state would establish a special convention to debate the Constitution and either ratify it (that is, approve it) or reject it. The Constitution would take effect once nine of the thirteen states ratified it.

It might seem that these state ratifying conventions faced a simple choice regarding the Constitution—"take it or leave it." Basically, that's true. The conventions did have to make that choice. Yet, the ratification debates did much more than that. They involved the entire nation in a vigorous debate. For more than a year, in newspaper articles, pamphlets, and essays, those for and against the Constitution argued about it vigorously. Every detail of the new system was examined, discussed, and challenged. Those who supported the Constitution called themselves "Federalists." Three of them—Alexander Hamilton, John Jay and James Madison—wrote 85 essays supporting the Constitution. The essays, known as *The Federalist Papers,* appeared first in New York newspapers. The opponents of the Federalists came to be labeled "Anti-Federalists," a group that included men like Patrick Henry, Sam Adams, Elbridge Gerry, and George Mason. Despite the label, the Anti-Federalists were not actually a single organized political party nor all of one mind in what they did not like about the Constitution.

Two chief dangers worried the Anti-Federalists. One was a fear that the government would deprive individuals of basic personal liberties such as freedom of speech and religion, or the right to a fair trial. The other concern was that the federal government's powers under the Constitution were too broad and would slowly weaken and destroy the independence of the states. The result would be a single "consolidated" all-powerful national government.

The ratification battles over such issues helped shape the Constitution in a way that few Constitutional Convention delegates thought necessary. The critics did this above all by demanding a bill of rights. They agreed to accept the Constitution only on the promise that its Article V would be used to add a bill of rights as a set of Constitutional amendments. According to Article V, such amendments can be proposed by two-thirds of both houses of Congress or by a convention called by two-thirds of the state legislatures. To be adopted, the amendments then must be approved by three-fourths of either state conventions or state legislatures.

Americans were very familiar with the idea of a bill of rights. They looked back to England's Magna Carta as one early example. The English Bill of Rights of 1688 is another. It limited the

power of the monarch, protected freedom of speech within parliament, established the right to petition the government, and prohibited courts from imposing cruel and unusual punishments. In America, a bill of rights was already a part of many state constitutions. Thomas Jefferson, writing to James Madison said, "A bill of rights is what the people are entitled to against every government on earth, general or particular, & what no just government should refuse or rest on inference."

However, most Federalists said a bill of rights was simply not needed for the proposed Constitution. Their main objection was that the Constitution already clearly limited the federal government to a set of enumerated powers and left everything else to the states. The new government would have no authority to take away any other rights. So why bother specifically listing and protecting some of those rights? Alexander Hamilton, in *Federalist 84*, asked "why declare things shall not be done, which [in the Constitution] there is no power to do? Why, for instance, should it be said, that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?"

At first, James Madison agreed with Hamilton. However, he soon came to see that unless some kind of bill of rights was agreed to, many state ratifying conventions would vote against the Constitution. He and other Federalists began to promise that once the new government was formed, a set of amendments would be proposed to satisfy those demanding a bill of rights. By July of 1788, the required number of states had ratified the Constitution. Many state ratifying conventions did call for various amendments. The first Congress would have to sift through these and decide which ones to send to the states to be voted on. When the new government met in 1789, it began to do just that.

Madison was a member of the first House of Representatives. He took charge of dealing with proposed amendments. He wanted to make sure that none of them would alter the basic structure of the new system—that is, its division into three separate branches (the legislative, the executive, and judicial branch), its system of checks and balances, its careful listing of powers of the federal government in relation to the states, etc. With this goal in mind, Madison worked tirelessly to reduce all the proposed amendments to just twelve. By the end of 1791, three-fourths of the states had approved ten of them. Those ten amendments are what we today call the Bill of Rights.

Amendments 1 and 2 protect personal liberties such as freedom of the press, speech and religion, or the right to bear arms. Amendments 4 through 8 provide for fair treatment in all judicial proceedings. Amendment 9 states that listing some rights specifically does not mean others can be denied to the people. Amendment 10 declares that all powers not specifically granted to the federal government are reserved to the states or the people.

The sources for this lesson ask you to discuss the Bill of Rights and consider some of the views of those at the time who favored it and those who opposed adding it to the Constitution.

Sources for this Lesson

Source 1: The Bill of Rights

The U.S. Bill of Rights refers to the first ten amendments to the U.S. Constitution. They can be accessed online from The Bill of Rights Institute at: https://billofrightsinstitute.org/primary-sources/bill-of-rights.

> First Amendment: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
>
> Second Amendment: 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.
>
> Third Amendment: No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.
>
> Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
>
> Fifth Amendment: 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.
>
> Sixth Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

> Seventh Amendment: 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.
>
> Eighth Amendment: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
>
> Ninth Amendment: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
>
> Tenth Amendment: The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Source 2. An Old Whig IV, in the *Independent Gazetteer,* October 27, 1787.

"An Old Whig" was a Pennsylvania Anti-Federalist whose identity is unknown. He feared the Constitution would create a far too powerful national government. To keep that from happening, he said, a bill of rights was needed. In this passage, he first summarizes a central idea from English philosopher John Locke, which the Founders shared, that every individual is born with certain natural rights. In this system of thought, people give up only a part of those rights to the government they create in order to protect themselves and preserve their remaining rights. This text is available from the Center for the Study if the American Constitution at: https://csac.history.wisc.edu/document-collections/constitutional-debates/bill-of-rights/.

> Men when they enter into society, yield up a part of their natural liberty, for the sake of being protected by government. If they yield up all their natural rights, they are absolute slaves to their governors. If they yield up less than is necessary, the government is so feeble, that it cannot protect them. To yield up so much, as is necessary for the purposes of government; and to retain all beyond what is necessary, is the great point, which ought, if possible, to be attained in the formation of a constitution. At the same time that by these means, the liberty of the subject is secured, the government is really strengthened; because wherever the subject is convinced that nothing more is required from him, than what is necessary for the good of the community, he yields a cheerful obedience, which is more useful than the constrained service of slaves. To define what portion of his natural liberty the subject shall at all times be entitled to retain, is one great end of a bill of rights. . . . [W]ithout such a bill of rights, firmly securing the privileges of the subject, the government is always in danger of degenerating into tyranny;

> for it is certainly true, that "in establishing the powers of government, the rulers are invested with every right and authority, which is not in explicit terms reserved." Hence it is, that we find the rulers so often lording over the people at their will and pleasure.
>
> Before we establish a government, whose acts will be THE SUPREME LAW OF THE LAND, and whose power will extend to almost every case without exception, we ought carefully to guard ourselves by a BILL OF RIGHTS, against the invasion of those liberties which it is essential for us to retain, which it is of no real use to government to strip us of; but which in the course of human events have been too often insulted with all the wantonness of an idle barbarity.

Source 3. "Federal Farmer II" on the Need for a Bill of Rights.

The "Federal Farmer" was a pen name of an Anti-Federalist who wrote a series of letters on the Constitution. The author may have been Richard Henry Lee or Melancton Smith. The letters were addressed to "The Republican," who was most likely New York governor George Clinton. This passage is from *Federal Farmer II*. It supports the need for a bill of rights and rejects the claim that the American states differ too much to ever agree to a single list of those rights. The essay is available online from Teaching American History at: https://teachingamericanhistory.org/document/federal-farmer-ii/.

> There are certain unalienable and fundamental rights, which in forming the social compact, ought to be explicitly ascertained and fixed—a free and enlightened people, in forming this compact, will not resign all their rights to those who govern, and they will fix limits to their legislators and rulers, which will soon be plainly seen by those who are governed, as well as by those who govern: and the latter will know they cannot be passed unperceived by the former, and without giving a general alarm. These rights should be made the basis of every constitution: and if a people be so situated, or have such different opinions that they cannot agree in ascertaining and fixing them, it is a very strong argument against their attempting to form one entire society, to live under one system of laws only. I confess, I never thought the people of these states differed essentially in these respects; they having derived all these rights from one common source, the British systems; and having in the formation of their state constitutions, discovered that their ideas relative to these rights are very similar. However, it is now said that the states differ so essentially in these respects, and even in the important article of the trial by jury, that when assembled in convention, they can agree to no words by which to establish that trial, or by which to ascertain and establish many other of these rights, as fundamental articles in the social compact. If so, we proceed to consolidate the states on no solid basis whatever.

Source 4. Alexander Hamilton Writing as "Publius" in *Federalist 84*.

Alexander Hamilton was a delegate to the Constitutional Convention and a leading Federalist in New York. Hamilton, James Madison, and John Jay together wrote the 85 essays of *The Federalist Papers*, all using the pen name "Publius." This passage is from *Federalist 84*, by Hamilton. In it, he explains why bills of rights in England made sense given that the English kings otherwise held unlimited powers. However, Hamilton says, a U.S. bill of rights is not needed given that the U.S. Constitution already strictly limits the government's powers. Moreover, those powers come from the people themselves, not a king. *Federalist 84* is available online from The Avalon Project at: https://avalon.law.yale.edu/18th_century/fed84.asp.

> It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by succeeding princes. Such was the PETITION OF RIGHT assented to by Charles I., in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations. "WE, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ORDAIN and ESTABLISH this Constitution for the United States of America." Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.

Source 5. Noah Webster, "The Absurdity of a Bill of Rights."

Noah Webster is best known as an American lexicographer whose spelling book and dictionary made him famous throughout the nation. In the 1780s, he was also an advocate for a stronger national government. Using the name "Giles Hickory," he published several essays in support of the Constitution. This passage is from one titled "The Absurdity of a Bill of Rights," published in December 1787. His argument is similar to that of Alexander Hamilton. The entire essay can be accessed online from Library of America at: https://storyoftheweek.loa.org/2017/03/on-absurdity-of-bill-of-rights.html.

> One of the principal objections to the new Federal Constitution is, that it contains no Bill of Rights. This objection, I presume to assert, is founded on ideas of government that are totally false. Men seem determined to adhere to old prejudices, and reason wrong, because our ancestors reasoned right. A Bill of Rights against the encroachments of Kings and Barons, or against any power independent of the people, is perfectly intelligible; but a Bill of Rights against the encroachments of an elective Legislature, that is, against our own encroachments on ourselves, is a curiosity in government. . . .
>
> In our governments, there is no power of legislation, independent of the people; no power that has an interest detached from that of the public; consequently there is no power existing against which it is necessary to guard. While our Legislatures therefore remain elective, and the rulers have the same interest in the laws, as the subjects have, the rights of the people will be perfectly secure without any declaration in their favor.
>
> But this is not the principal point. I undertake to prove that a standing Bill of Rights is absurd, because no constitutions, in a free government, can be unalterable. The present generation have indeed a right to declare what they deem a privilege; but they have no right to say what the next generation shall deem a privilege. A State is a supreme corporation that never dies. Its powers, when it acts for itself, are at all times, equally extensive; and it has the same right to repeal a law this year, as it had to make it the last. If therefore our posterity are bound by our constitutions, and can neither amend nor annul them, they are to all intents and purposes our slaves.

Student Activity

Instructions to the Student: Briefly review the Background Essay and the five sources for this lesson. Then take notes on some of these sources in response to the questions provided below. Using these notes, write a brief (two-three pages) essay addressing the DBQ listed on the next page of this student activity. (DBQ stands for Document Based Question.)

1. In what ways do the Old Whig (Source 2) and the Federal Farmer (Source 3) agree about the reasons a bill of rights is a good idea?

2. In what ways, if any, do they make different points about the need for a bill of rights?

3. Hamilton (Source 4) and Webster (Source 5) see a key difference between England and America regarding the need for a bill of rights. What is that difference?

4. What point does Federal Farmer (Source 3) make about the great geographical extent and variety of states making up the young United States?

Complete the assignment following the instructions on the next page.

DBQ Essay assignment: Write an essay addressing the following:

With which of the sources for this lesson do you agree most? Do you think these sources are as correct today as they were in 1787? Explain your answers in detail.

Before writing your essay, review the guidelines here for writing DBQ essays.

1. Consider the question carefully. Pay attention to the question's form (cause-and-effect, compare-and-contrast, assess the validity, etc.), which will suggest how best to organize your essay.

2. Thesis statement and introductory paragraph. A clear statement addressing all parts of the DBQ, it must make a claim you can back up with the sources, and it should be specific enough to help you organize the rest of your essay.

3. Using evidence. Use the notes on the sources for this lesson. Refer to specific points or details in each source. If a source does not support your thesis, still try to use it as a way to support or qualify your thesis.

4. Make your argument. Your internal paragraphs should make your argument in a logical or clear way. Use transition phrases such as "on the one hand. . . but on the other hand," to help readers follow the thread of your argument.

5. Wrapping it up. Don't add new details about sources in your final paragraph. State a conclusion that refers back to your thesis statement by showing how the evidence has backed it up.

Use additional sheets of paper as needed.