



LESSON 3

CHECKING POWER WITH POWER

UNIT 1

Constitutional Underpinnings of the U.S. Government (≈10%)

WHY IS THERE A NEED FOR A GOVERNMENT?

- Natural law - law that defines right from wrong, which is higher than human law
- *Federalist #10*
 - Source of contention – property
 - “But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society.”
 - Those that have it want to keep it (and get more)
 - Those that don’t have it, want it (and the Founding Fathers didn’t want to lose their property)
 - Factions are inevitable, but can be controlled with a large republic
 - “...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.”
- *Federalist #51*
 - “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.”
 - “If men were angels no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary.”

HOW WOULD THIS NEW CONSTITUTION FIX THE OLD “CONSTITUTION”?

- Madison was concerned that government would be controlled by majority or minority factions >> factions best controlled by a large republic
 - Minority can be suppressed by majority rule; Majority is more difficult to control
- Constitution is a supreme and binding law that both grants power to the government and limits the power of the government

WHAT WAS ONE OF MADISON'S THREE AUXILIARY PRECAUTIONS TO PREVENT TYRANNY? - SEPARATION OF POWERS

- Allocation of constitutional authority to each of the three branches of the national government
- To Madison, tyranny was government that controlled all 3 branches of government >> division of power among the legislative, executive, and judicial branches
- Colonial experiences, e.g. excessive power in state legislatures >> need for strong executive
- Danger of one branch combining forces with another branch >> checks and balances

WHAT WAS ONE OF MADISON'S THREE AUXILIARY PRECAUTIONS TO PREVENT TYRANNY? - CHECKS AND BALANCES

- Background
 - 18th century view of government as something to be restrained, and modern view of government as something to be used for the common good.
 - Fear of tyranny among Founders >> distrust of government >> checks and balances as means of intentionally building inefficiency in order to prevent government abuse of power.
- Each branch has a role in the actions of others (veto, veto override, appointment and confirmation, treaty making and ratification, defense funding and Commander-In-Chief)
- Each branch is politically independent of the others
- Power struggles among three branches (especially Congress and the president)
- A majority of the voters can win control over only part of the government at one time. Staggering of terms within each branch >> a majority of voters can gain control over one part of government at one time, e.g. midterm congressional elections can serve as a check of the executive.
- Independent national courts are provided
- Political independence within each branch: no branch is dependent upon the other two for election (exception: judges are appointed by President) and continuance in office (life terms for judges ameliorate presidential influence)

JUDICIAL REVIEW - *MARBURY V. MADISON* (1803)

- Framers did not specifically provide for judicial review
- Court could not enforce an unconstitutional law (Section 13 of Judiciary Act)
- Chief Justice John Marshall reasoned that judges should interpret the Constitution, not the President or Congress
- Judicial review became established due to this case
- A single person may challenge an existing law through judicial hearings
- Effects
 - Litigation sometimes trumps legislation as a way to make public policy
 - Examples – Modern-day gun issues
 - *District of Columbia v. Heller* (2008) - Supreme Court held that a constitutional right to gun ownership - irrespective of service in a state militia - did exist.
 - *McDonald v. Chicago* (2010) - The Second Amendment right to keep and bear arms for self-defense in one's home is fully applicable to the states through the Fourteenth Amendment.

FREE RESPONSE QUESTION (FRQ) REVIEW

1. In *The Federalist* paper number 10, James Madison expressed concern over the possibility that both majority and minority factions would have too much power over government, and he presented ways of minimizing that danger. The United States Constitution established a democratic government but also contained several provisions that limited majority rule.
 - (a) Identify the part of the national government that was originally most closely tied to citizens and explain how it was tied to citizens.
 - (b) Explain two ways the United States Constitution limited majority rule.

2. The framers of the Constitution created a political system based on limited government. The original Constitution and the Bill of Rights were intended to restrict the powers of the national government. Later constitutional developments also limited the powers of state governments.
 - (a) Explain how checks and balances limit the powers of the national executive.

3. The Constitution limited the power of the national government and restricted popular control; however, citizen participation has changed over time.
 - (a) Explain how checks and balances have protected against the concentration of power in the national government.

4. The framers of the Constitution developed a system of checks and balances to make sure there was "great security against a gradual concentration of the several powers in the same department".
 - (a) List and explain the checks that the legislative branch (Congress) has over the executive branch (President) and judicial branch (Supreme Court).
 - (b) List and explain the checks that the executive branch (President) has over the legislative branch (Congress) and judicial branch (Supreme Court).
 - (c) List and explain the checks that the judicial branch (Supreme Court) has over the legislative branch (Congress) and executive branch (President).

MULTIPLE CHOICE (MC) REVIEW

1. What is the name given to the law that would govern human beings before governments existed?
(A) original law
(B) Biblical law
(C) natural law
(D) Constitutional law
(E) universal law
2. The U.S. Constitution was adopted in response to the weaknesses of the Articles of _____.
(A) Unity
(B) Revolution
(C) America
(D) Democracy
(E) Confederation
3. James Madison sought to prevent the tyranny of the _____ by distributing governmental authority among several branches.
(A) minority
(B) wealthy
(C) majority
(D) king
(E) military
4. *Marbury v. Madison* is significant because it gave the courts power to do which of the following?
(A) declare laws unconstitutional
(B) make laws
(C) elect the president
(D) change laws they do not agree with
(E) issue writs to public officials
5. In which of the following cases did the Supreme Court first claim the right of judicial review?
(A) *McCulloch v. Maryland*
(B) *Brown v. Board of Education*
(C) *United States v. Nixon*
(D) *Dred Scott v. Sandford*
(E) *Marbury v. Madison*
6. What is known as the power to interpret the Constitution?
(A) adversary system
(B) judicial review
(C) common law
(D) justiciable dispute
(E) constitutional law
7. "An act of the legislature repugnant to the Constitution is void . . . it is emphatically the province of the judicial department to say what the law is."
John Marshall, 1803

The above quote from the majority opinion of *Marbury v. Madison* establishes which important power of the court?
(A) strict construction
(B) appellate jurisdiction
(C) judicial review
(D) certiorari
(E) class action suits
8. For Madison, in the *Federalist* #10, "the most common and durable source of factions has been..."
(A) unequal natural abilities of people
(B) the unequal distribution of property
(C) religion and ideology
(D) the various regional interests within the country
(E) the various political views held by the elites
9. What is the basis of James Madison's argument in *Federalist No. 10*?
(A) Factions are dangerous and must be destroyed.
(B) The government can eliminate the cause of faction.
(C) Political parties should be encouraged to form so that all viewpoints are represented.
(D) A balance of government can control factions and prevent one faction from gaining too much power.
(E) State government will prevent factions from forming.