

Effect of Judicial Review on the Principle of Separation of Powers

Robert Crosby
8th Grade

National Standard

Era 3: Revolution and the New Nation (1754-1820s) / Standard 3A

Standard 3: The student understands the issues involved in the creation and ratification of the United States Constitution and the new government it established.

Grade level (7-12): Analyze the alternative plans considered by the delegates and the major compromises agreed upon to secure approval of the Constitution. [Examine the influence of ideas]

Grade Level: 8

Washington State Standards

EALR: 1. CIVICS - The student understands and applies knowledge of government, law, politics, and the nation's fundamental documents to make decisions about local, national, and international issues and to demonstrate thoughtful, participatory citizenship.

Component: 1.1: Understands key ideals and principles of the United States, including those in the Declaration of Independence, the Constitution, and other fundamental documents.

Grade Level Expectation: 1.1.1: Understands key ideals and principles outlined in the Declaration of Independence, including life, liberty, and the pursuit of happiness, the U.S. Constitution, including the rule of law, separation of powers, representative government, and popular sovereignty, and the Bill of Rights, including due process and freedom of expression.

BACKGROUND

During the American Revolution the colonies were united under the Articles of Confederation, which became our first Constitution. This document created a legal relationship between the colonies. However, its form was a confederation that gave little power to the central government. Furthermore, the structure was a unicameral legislative body with equal voting power between states. While it served as an appropriate tool during the Revolution, it compounded the problems the new nation faced after the revolution, i.e., foreign/domestic debt, enforcement of the rule of law, respect from countries abroad, and resolution of conflicts between states.

By 1787 leaders from around the country were ready to meet and discuss the serious shortcomings of the document and offer solutions. A new document was created and after much debate and compromise it became our national constitution in 1789.

The structure of the new government was different, and it gave more power to the new central government. It created a **separation of powers** commonly referred to as the three branches. A legislative branch to make laws, an executive to enforce laws, and a judicial to interpret laws.

In addition to separating the branches, the new Constitution created a system to balance the power(**checks and balances**) of the branches in order to prevent an overuse of power by another branch. For instance, the document gave the executive branch the power “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

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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.” (**Article II, Section 2, U.S. Constitution**)

As you can see in the example given above, the Constitution gives the executive branch power to appoint, but the filling of an appointment is dependent upon the “consent” of the Senate.

The framers of the Constitution struggled with the issue of the strength of the new federal government, and at the same time they recognized the deplorable situation of the country at the time was a result of a weak central government lacking the power to enforce it’s laws and hold states accountable to the agreed upon terms of the Articles of Confederation.

The power and structure of each branch is laid out in the first three articles of the Constitution. However, the actual structure of the judicial branch under the supreme court is left to the legislative branch (Congress) to determine. One of the first pieces of legislation passed by the new Congress was the Judiciary Act of 1789, which established the federal courts inferior to the Supreme Court.

SCENARIO

The Presidential election of 1800 resulted in a change of Presidents (Adams to Jefferson), as well as party control (Federalist to Democratic Republican Party) of the legislative and executive branches.

Before leaving office the Federalist Congress had asserted its right to expand the federal courts, and the executive branch (President John Adams) had fulfilled its duty by appointing judges to those positions. However, in order for those individuals to actually be seated as new justices, they needed an official written commission delivered by the Secretary of State. President Adams was not able to have all the commissions delivered before he was to vacate the executive office. As a result, the new President, Thomas Jefferson, would need to direct his Secretary of State, James Madison, to deliver the commissions. Jefferson chose not to have the commissions delivered, and one of the chosen judges named William Marbury took the case to the Supreme Court in order to force Madison to deliver the commission. Marbury argued that the Supreme Court had the power to force the executive branch to give him his commission according to the writ of mandamus provided for in the Judiciary Act of 1789. The court ruling in this case established the principle of judicial review and significantly increased the power of the judicial branch.

Your group has been formed as a legal panel to review the Supreme Court decision in the 1803 Marbury v. Madison case in order to decide if the ruling violated the framers' principle of separation of powers.

Your work will be reviewed by a panel considering challenging the validity of the ruling. You must be prepared to explain and defend your findings to the panel.

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TASKS

Use the resources provided, as well as the credible resources you come across in your research, to discover the principle of "Separation of Powers" as it was conceived and developed by the framers of the U.S. Constitution.

Review the decision in the Marbury v. Madison Supreme Court case to determine if it was in conflict with the framers' purpose and function of separation of powers. Defend your findings in front of a panel.

RESOURCES

Books

US Constitution (textbook)

Internet

"Documents from the Continental Congress and the Constitutional Convention, 1774 - 1789." The Library of Congress. 2010. Washington, DC. 11 November 2010 <<http://memory.loc.gov/ammem/collections/continental/>>.

"Judicial Review." ©2010. Answers.com. ©1999 - 2010. [location unknown]. 11 November 2010 <<http://www.answers.com/topic/judicial-review>>.

Madison, James. "Journal of the Constitutional Convention of 1787" from *The Writings of James Madison*, vol. 3, G.P. Putnam's Sons, 1900. The Online Library of Liberty. ©2010. Indianapolis, IN. 11 November 2010 <http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1935&chapter=118621&layout=html&Itemid=27>.

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ASSESSMENT

PBL Group Process Rubric

PBL Group Process	4	3	2	1
On Task	The group is working on the assignment and uses their time efficiently.	The group was on task the majority of the time. They only needed 1 reminder.	The group needed a 2-4 reminders to get back on task.	The group needed constant reminders to be on task.
Problem-Solving	Each member contributes to solving the issues and problems that arise in the group.	Most of the time the group was able to solve their own problems. Needed guidance only once.	The group needed guidance to solve problems 2-3 times.	The group was not able to solve problems that arose.
Working with Others	Members of the group listen to, share and support each other.	Group members most often listened to and supported each other. Problems only arose once.	Group members frequently (2-3 times) had difficulty listening and sharing ideas.	Group members did not work cooperatively and were not listening to each other.
Prepared for Class	Each member came to class prepared to work on the assignment each and everyday.	Group was most often prepared for class. Had to retrieve supplies 1-2 times.	Group was more unprepared than not, and had to get supplies 3-4 times.	Group members were continually unprepared for class work and had to get supplies on a regular basis.

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PBL Self-Evaluation Rubric

PBL Self-Evaluation	4	3	2	1
Quality of Research	Research questions and notes taken were in-depth and appropriate.	Research questions and notes were appropriate but not as in-depth as they should be.	Research is incomplete and notes are not as in-depth as they should be.	Research notes are not appropriate for the topic and there is no clear focus.
Sources and Annotations	All sources were cited and you explained why your sources are credible-minimum 3 primary sources	Comment but 1-2 sources are not cited and/or annotated.	3-4 sources are not cited and/or annotated.	No sources are cited and/or annotated.
Requirements	All steps of process are completed and guided worksheet is turned in. Your personal responsibility was completed.	1-2 steps of the process are not completed or documented	3-4 steps of the process are not completed or documented.	Worksheet requirements were not completed and personal responsibility was not completed.
Presentation	Presentation was loud, clear, neat and organized.	Presentation was almost loud or clear enough for the audience to hear easily. Was organized.	Presentation was way too soft, not very neat or organized.	Presentation was very hard to hear and not organized.

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REFERENCES/CITATIONS

"Article II, Section 2, U.S. Constitution" from the *Constitution of the United States*. US National Archives and Records Administration. ©1995 - 2010. College Park, MD. 11 November 2010 <http://www.archives.gov/exhibits/charters/constitution_transcript.html>.

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"History Standards for Grades 5-12 United States." UCLA National Center for History in the Schools. 2005. Los Angeles, CA. 11 November 2010 <<http://nchs.ucla.edu/standards/us-standards5-12.html>>.

OSPI. "Social Studies Essential Learning Requirements: Recommended Grade-by-Grade Sequence for Grade Level Expectations – K-12." Office of Superintendent of Public Instruction. 2009. Olympia, WA. 10 June 2010 <http://standards.ospi.k12.wa.us/EalrsPubDocs/GradeSpecificDocument/Social%20Studies/GLEs-Social_Studies-Grade8.doc>.

"PBL Group Process Rubric." Adapted from Taylor, Kaycee. "Indian Policy in the 19th Century." NWESD Organization. 2008. Anacortes, WA. 5 July 2009 <http://www.nwesd.org/1510101216191755740/lib/1510101216191755740/6.4_IndianPolicy.Taylor.11.pdf>.

"PBL Self-Evaluation Rubric." Adapted by Robert Crosby. "Effect of Judicial Review on the Principle of Separation of Powers." NWESD Organization. 2009. Anacortes, WA. 11 November 2010 <http://www.nwesd.org/1510101216191755740/lib/1510101216191755740/33A_Constitution.Creation.Crosby.8.pdf>.