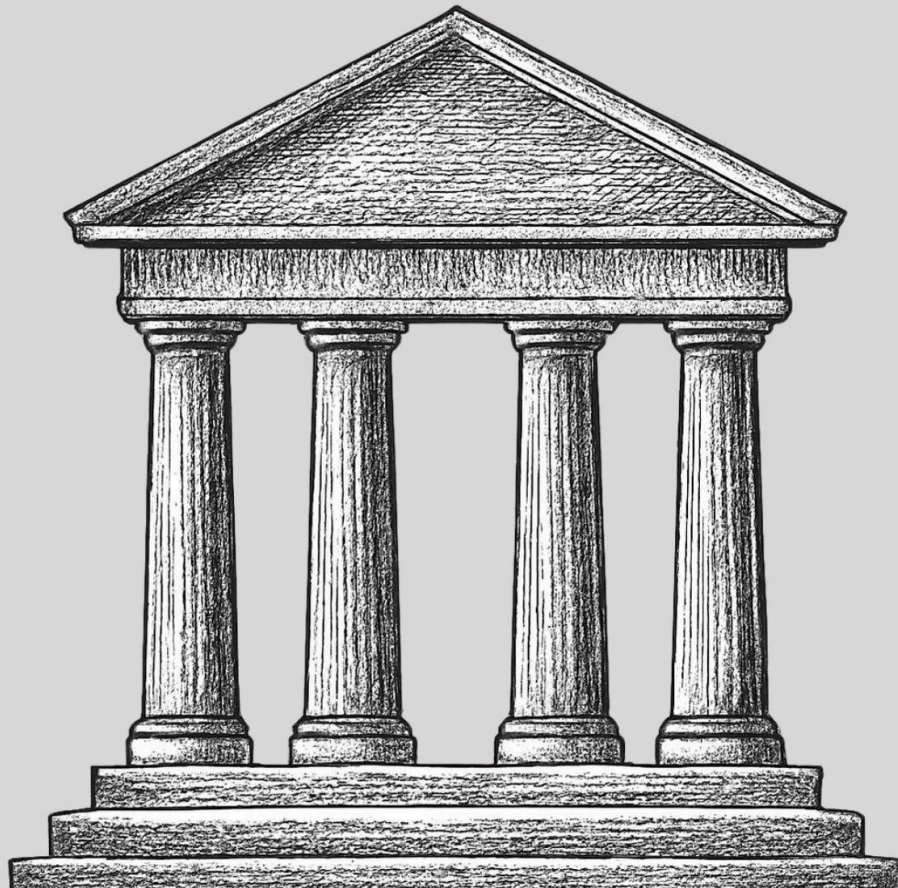


AMERICAN LAW I

COMMON LAW PRESS

**CONSTITUTIONAL
STRUCTURE
JUDICIAL POWER &
STANDING**

BY COMMON LAW PRESS



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An Introduction

The idea for this curriculum has been on my mind for many years. However, as a homeschooling mother of six children, five of whom are school aged, its actual creation has taken several years to come to fruition. This curriculum is fully secular, and I believe unparalleled in the current curriculum market.

In addition to being a licensed attorney, I have also worked as a legal writer for the past fifteen years. In practice, this means taking complex legal topics and breaking case decisions and figuring out how to write about them in a way that the average blog reader would be able to understand (and want to read). I believe that it's probably in large part due to this particular experience that I have been able to take essentially a complete law school level of information and present it on a level that any willing high school student should be able access.

I am very grateful to have been able to consult with my husband on this project, as he is also a licensed attorney. In addition to discussing the nuts and bolts of what to teach and how, he has been especially insightful with regard to whether or not my expectations are realistic. For example, the extended case law table that accompanies the mini moot court brief writing assignment is the direct result of a conversation we had regarding the likelihood of high school students being able to engage in legal research. I apologize to my co-op students for not realizing the disconnect sooner!

I am also especially thankful to have been able to have briefly conferred with one of my former law professors regarding specific legal concepts. During law school, he taught me: Civil Procedure I & II, Evidence, and Constitutional Law II. It is thanks to him, for example, that you will find a second, alternative, case on standing. If I recall correctly, he tried hard to dissuade me from teaching *Lujan* altogether. After you complete the lesson, you'll have to let me know whether I made a grave mistake in including it! I am choosing not to include his name here because I do not wish to try and ride on any coattails or imply that we engaged in more than a handful of emails back and forth. Even so, I am extremely grateful for his guidance and insights based on decades of teaching experience, and also especially his dry sense of humor. That was always the highlight of his lectures.

While I initially believed that I would be creating a course based solely on U.S. Constitutional Law, once I began teaching and writing I realized it would be much more interesting to expand the purview of the cases to include topics that I knew would be highly engaging to the average teenager. This is especially true of the content in the second quarter and beyond.

At the end of the day, I believe that this course will allow you to:

- Learn foundational legal principles
- Complete practice based legal writing exercises

- Engage in oral advocacy (whether through discussion prompts or via the mini moot court exercise)
- Learn how the U.S. legal system actually works
- Become a more informed citizen
- Develop higher level critical thinking skills
- Respond to Socratic dialogue questions/engage in a Socratic dialogue
- Have fun?

I invite you to contact me directly with any comments or questions or constructive criticism of how the course progressed. I hope that you will enjoy the material enough to consider moving on to Unit 2 and beyond!

How This Curriculum is Structured

This course is designed to be flexible depending upon the needs of the user. It was created to facilitate a co-op style discussion among a group of high schoolers that were meeting in person once a week. Thus, it is absolutely capable of being used in a group setting. Please contact Common Law Press directly for more information about group licensing. That being said, many homeschoolers educate their students in an individual setting. Thus, the curriculum is written in such a way that it can also be used with one student, or multiple students within one household. It can either be used independently or it can be done in tandem with the person who is educating the student(s). Each lesson has two major components, as follows:

Google Classroom Post -- Because the course was initially created to facilitate a group of students meeting only once per week, all of the necessary reading assignments, videos, and comprehension questions are formatted into a user-friendly Google Classroom format. There is one post for each lesson. These can be used within your own family, or if you do not wish to use Google Classroom, you may simply use the assignment page as you would with any other curriculum. You begin with this component each week.

Lecture-- This was initially designed to be used by the teacher and read aloud to the student. However, considering the logistical realities of homeschooling, it can alternatively be used either by the person teaching the student, or it can be read independently by the student. This is the second component each week, intended to be done after the Google Classroom assignments have been completed.

Both components, the Google Classroom Post and the Lecture are accompanied by their own “worksheets,” (so two per lesson) designed to mirror the content taught and elicit critical thinking in the form comprehension and Socratic dialogue questions. Interspersed throughout the unit you will find many opportunities for optional legal writing and other extension activities. Use your discretion in determining whether you wish to require these assignments. The content of the course is challenging and complex even without the optional legal writing extensions.

Additionally, in the middle of the course there is a lecture about Criminal Theories of Punishment, which introduces the themes to be addressed in Unit 2, which deals more squarely with Criminal Law, Criminal Procedure, and the like. I have included this lesson in order to serve as a palate cleanser between two rather dense constitutional law topics, and also to serve as an invitation for you to consider pursuing additional study with our materials in Unit 2. It also contains a reader’s journal for the book (Just Mercy, the YA adaptation). My students began reading the book *before* the second unit, so that we could focus on the law when the time came. That being said, if you are looking to trim a lesson for whatever reason, this lesson is most suitable as it serves as a break in the logical arc of the overall unit.

*****CONTENT

WARNING*****

PLEASE PLEASE PLEASE preview the book, yourself. It contains strong, mature, adult content. While the content is completely within the parameters of what the criminal justice system and prison system are actually like, it can be too much for certain readers. In fact, the heaviness of the content is one of the reasons I recommend this course would be most appropriate for grades 10-12.

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In the future, I hope to be able to make audio recordings of the lectures in order to embellish upon and enrich the underlying content, as this was possibly the most rewarding aspect of being able to personally teach this course in person. That being said, I realize that the curriculum may present challenges in implementation for the non-lawyer. Therefore, if there ever comes a time where you or your student(s) feel stuck, or are not understanding a concept or assignment, please do feel free to reach out to me directly. Thank you for purchasing this curriculum and giving Common Law Press a chance!

Unit 1: Constitutional Structure, Judicial Power & Foundations of Criminal Justice

Articles I–III • Judicial Review • Justiciability • Jurisdiction • Criminal Punishment • Incorporation

Credit Recommendation: 0.25 credit (Quarter Unit)

Course Type: Law / Civics Elective

Suggested Grade Level: 10–12

Course Overview

Module 1 introduces students to the constitutional architecture that structures the American legal system and shapes the administration of justice. Through sequential study of Articles I–III, Federalist Papers, judicial review, philosophical theories of punishment, justiciability doctrines, federalism limits, and personal jurisdiction, students learn how courts derive their power, how they interpret the Constitution, and how rights become enforceable against the states.

The module blends structural constitutional law, jurisprudential theory, and early criminal justice concepts, establishing a strong intellectual foundation before students enter modern doctrine and *Just Mercy* (in Unit 2).

Throughout the unit, students analyze landmark cases—including *Marbury v. Madison*, *Lujan v. Defenders of Wildlife*, *United States v. Lopez*, *International Shoe v. Washington*, and the selective incorporation sequence from *Twining* to *Duncan*—gaining the tools to understand how courts determine jurisdiction, interpret laws, define federal limits, and decide when constitutional rights apply to state governments.

A guided Mini Moot Court simulation allows students to apply these concepts through oral argument, judicial questioning, and written reasoning.

Core Topics

1. Constitutional Structure: Articles I–III

- Separation of powers among the legislative, executive, and judicial branches.
- Federalism and the distribution of authority between state and federal governments.
- How constitutional design protects liberty, checks power, and creates accountability

2. The Federalist Papers: Nos. 10, 51, and 78

- Factions and the problem of majority rule.
- Structural safeguards and balancing mechanisms.
- Judicial independence and Hamilton’s vision of the “least dangerous branch.”

3. How the Supreme Court Works

- Trial courts, appellate courts, and the structure of the federal judiciary.
- Writ of certiorari and the criteria for Supreme Court review.
- Role of precedent, judicial hierarchy, and certiorari strategy.
- Introduction to the current Court and its judicial philosophies.

4. Judicial Review & Constitutional Interpretation (*Marbury v. Madison*)

- Establishing the judiciary’s authority to interpret the Constitution.
- Originalism, textualism, and living constitutionalism.
- The limits and legitimacy of judicial power.

5. Theories of Criminal Punishment + *Just Mercy*

Introduction

- Retribution, deterrence, rehabilitation, restoration, and incapacitation.
- How punishment theories influence criminal procedure and sentencing.
- Ethical and philosophical foundations for understanding *Just Mercy*.
- Pre-reading questions to prepare students for Eighth and Fourteenth Amendment themes

6. Standing & Justiciability (*Lujan v. Defenders of Wildlife*)

- Injury-in-fact, causation, and redressability.
- Political questions, advisory opinions, and separation-of-powers limits.
- Why federal courts decline to hear certain disputes—even when they matter politically.

7. Federalism Limits (*United States v. Lopez*)

- Commerce Clause authority and its boundaries.
- Distinguishing national power from state police powers.
- How *Lopez* reshaped modern federalism doctrine.

8. Personal Jurisdiction & Minimum Contacts (*International Shoe v. Washington*)

- When courts have authority over individuals and corporations.
- The Due Process Clause and fairness considerations.
- General vs. specific jurisdiction and the rise of long-arm statutes.

9. Incorporation & the Fourteenth Amendment

- The evolution from “fundamental fairness” to selective incorporation.

- Competing theories: total incorporation, selective incorporation, and Amar's citizenship-based theory.
 - Why certain rights apply to the states and others do not.
 - The modern incorporation landscape, including *McDonald v. Chicago*.
-

Mini Moot Court Simulation

Students participate in a guided moot court exercise that integrates standing, federalism, and jurisdiction.

- Assigned roles (petitioner, respondent, justices)
 - Oral argument practice and structured judicial questioning
 - Optional written appellate brief or mini-memo
-

Learning Objectives

Students will be able to:

- Explain how Articles I–III structure the federal government and allocate power.
- Analyze the role of the judiciary using *Marbury v. Madison* and Federalist 78.
- Describe how cases progress through the federal courts and reach the Supreme Court.
- Evaluate standing and justiciability using the *Lujan* test.
- Explain federalism limits through *United States v. Lopez*.
- Determine when personal jurisdiction exists using *International Shoe*.
- Trace the development of incorporation from *Twining* to *Duncan*.

- Explain why rights apply to the states and how the Fourteenth Amendment transformed constitutional law.
 - Apply legal reasoning in a simplified moot court setting.
 - Connect constitutional structure to themes of justice and punishment that prepare students for *Just Mercy*.
-

Assignments & Activities

Lecture Note Worksheets

Fillable notes covering Articles I–III, judicial review, theories of punishment, standing, federalism, jurisdiction, and incorporation.

Mini Moot Court Exercise

- Assigned roles (petitioner, respondent, justices)
- Oral argument and judicial questioning

Memo Assignment

- Students read sample legal memo
- Learn structure: Issue, Rule, Application, Conclusion

Optional Brief Assignment

- Students may complete a “mini memo” arguing a side in the moot court case

Federalist Papers Reflection

Short written response connecting Federalist themes to separation of powers, judicial independence, and constitutional design.

Course Outcome

By the end of Module 1, students will understand the foundational constitutional structure of the United States government, the origins of judicial authority, and the mechanisms that determine when courts may hear a case. They will be able to explain federalism limits, analyze jurisdiction, assess standing, and trace how constitutional rights became enforceable against state governments.

Through philosophical analysis, case studies, structured writing, and a mini moot court, students build the analytical skills necessary for further study of American law, criminal procedure, and constitutional interpretation.

Note: This quarter-unit module is part of the year-long high school elective course *Introduction to American Law*, published by **Common Law Press**.

Recommended Textbook:

An Introduction to Constitutional Law: 100+ Supreme Court Cases Everyone Should Know 2nd Edition, Randy E. Barnett, Josh Blackman.

I like this text because it contains links to some 60+ lectures which describe the cases in more detail. This may be an excellent option for those wishing to have a deeper dive with particular cases. Additionally, there is straightforward written material for each of the cases covered. While this curriculum will not be assigning reading from the book, it is an excellent and affordable resource to have on hand.

I will create a list of additional books to accompany this unit, and future units, on the website. Please check periodically for updates: <https://commonlawpress.com/>

Links:

Where possible, I have attempted to link to audio versions of documents or resources. My goal is to make the content accessible, regardless of format. The following links are generally applicable. All of the required readings and videos are listed in each individual lesson.

The Constitution, printable: <https://constitutioncenter.org/media/files/constitution.pdf?authuser=2>

The Constitution, audio/video: <https://www.youtube.com/watch?v=QZxBOzwgBQE>

Khan Academy Constitution 101 (for additional focused study):

https://www.khanacademy.org/humanities/constitution-101?utm_source=Sailthru&utm_medium=email&utm_campaign=090825-Teacher-Constitution-101-All%20US%20Teachers&utm_content=Final&utm_term=Eric-Test-Teacher-Combined-AllUser-AllTeacher-Suppression

Unit 1 Lesson Overview

Lesson 1: Constitutional Structure & Separation of Powers

Overview of Articles I–III; roles and limits of Congress, the Executive, and the Judiciary; introduction to federalism and how the constitutional structure safeguards liberty.

Lesson 2: Foundational Readings — The Federalist Papers

Guided reading and discussion of Federalist Nos. 10, 51, and 78 to frame debates about factions, checks and balances, judicial independence, and the “least dangerous branch.”

Lesson 3: How the Supreme Court Works

The federal court hierarchy; how cases progress from trial to appellate review; certiorari and case selection; introduction to the current Supreme Court and interpretive philosophies.

Lesson 4: Judicial Review — *Marbury v. Madison* (1803)

Establishing the judiciary’s power to interpret the Constitution; limits and legitimacy of judicial review.

Lesson 5: Theories of Criminal Punishment + *Just Mercy* Pre-Reading Discussion

Retribution, deterrence, rehabilitation, incapacitation, and restoration; ethical foundations of punishment; connecting philosophical frameworks to the themes explored in *Just Mercy*.

Lesson 6: Standing & Justiciability — *Lujan v. Defenders of Wildlife* (1992)

Injury-in-fact, causation, and redressability; political questions and advisory opinions; Legal Writing Component: introduction to objective legal analysis; IRAC/CRAC review and memo practice worksheet.

Lesson 7: Federalism Limits — *United States v. Lopez* (1995)

Commerce Clause boundaries and modern federalism doctrine. Mini Moot Court Activity: students argue a simplified Commerce Clause issue. Extension Opportunity: appellate brief writing.

Lesson 8: Personal Jurisdiction — *International Shoe v. Washington* (1945)

Minimum contacts, fairness, and the Due Process Clause; general vs. specific jurisdiction; introduction to long-arm statutes.

Lesson 9: Incorporation & the Fourteenth Amendment

Evolution of Incorporation from *Twining* → *Palko* → *Adamson* → *Duncan*; modern incorporation doctrine; why and how rights apply to the states; overview of Amar’s theory and *McDonald v. Chicago*.

Two Truths and a Lie

The following is a game I made for the students on the first day of co-op to test their prior exposure to cases and to have a little fun! The prize for getting the most correct was a pack of legal pads. I would suggest doing this in a group setting, whether with family members or at a homeschool park day, or whatever group makes sense. You can either have students move to designated areas to make their guess as to which case is a lie, or have each hold up 1, 2, or 3 fingers, or make signs, etc. You can re-read cases if students ask, and you definitely don't have to complete the entire set. Read the prompts in a different order than listed so that the lie isn't always the third case. The most important point is to have fun!



Two Truths and a Lie: U.S. Supreme Court Edition

Set 1

1. Brown v. Board of Education (1954) – Held that racial segregation in public schools is unconstitutional under the Equal Protection Clause.
2. Plessy v. Ferguson (1896) – Upheld racial segregation under the “separate but equal” doctrine.
3. Johnson v. Kansas School Board (1958) – Held that individual states could delay desegregation until they had sufficient resources. (✗ Fake)

Set 2

4. Miranda v. Arizona (1966) – Required that suspects be informed of their rights before police questioning.
5. Gideon v. Wainwright (1963) – Guaranteed the right to legal counsel for defendants in criminal cases.
6. Franklin v. Tucson (1965) – Ruled that defendants may waive their right to counsel only with approval of the Attorney General. (✗ Fake)

Set 3

7. Marbury v. Madison (1803) – Established judicial review, giving the Court the power to strike down unconstitutional laws.
8. McCulloch v. Maryland (1819) – Affirmed the constitutionality of the national bank and denied states the power to tax it.
9. Randolph v. United States Treasury (1820) – Held that states could collect taxes on federal buildings within their borders. (✗ Fake)

Set 4

10. New York Times v. United States (1971) – Allowed the press to publish the Pentagon Papers, limiting prior restraint.
11. Schenck v. United States (1919) – Upheld limits on free speech when it creates a “clear and present danger.”

12. *Anderson v. Press Board* (1925) – Ruled that newspapers required federal approval before publishing sensitive information. (✗ Fake)

Set 5

13. *United States v. Nixon* (1974) – Ordered President Nixon to release White House tapes, limiting executive privilege.
14. *Clinton v. Jones* (1997) – Held that a sitting president is not immune from civil litigation for unofficial conduct.
15. *Harrison v. Obama* (2010) – Held that presidents are immune from all lawsuits while in office. (✗ Fake)

Set 6

16. *Korematsu v. United States* (1944) – Upheld Japanese American internment during World War II.
17. *Hamdi v. Rumsfeld* (2004) – Recognized the right of U.S. citizens detained as enemy combatants to due process.
18. *Peterson v. War Powers Council* (1950) – Invalidated Congress's ability to declare war without the president's approval. (✗ Fake)

Set 7

19. *Tinker v. Des Moines* (1969) – Upheld students' First Amendment rights to protest in schools, unless it causes substantial disruption.
20. *Morse v. Frederick* (2007) – Allowed schools to restrict student speech promoting illegal drug use ("Bong Hits 4 Jesus").
21. *Wallace v. School District of Alabama* (1974) – Required public schools to allow political protests during class time. (✗ Fake)

Set 8

22. *Bush v. Gore* (2000) – Effectively decided the 2000 presidential election by halting Florida's recount.
23. *Shelby County v. Holder* (2013) – Struck down part of the Voting Rights Act's preclearance formula.
24. *Jefferson v. Federal Elections Commission* (1998) – Required that all campaign donations be matched by federal funds. (✗ Fake)

Set 9

25. *Mapp v. Ohio* (1961) – Applied the exclusionary rule to the states, barring illegally obtained evidence in court.
26. *Terry v. Ohio* (1968) – Allowed police to stop and frisk individuals if there is reasonable suspicion of criminal activity.
27. *Ferguson v. Cleveland Police Dept.* (1962) – Required suspects to consent to all searches if police believed it was necessary. (✗ Fake)

Set 10

28. Dred Scott v. Sandford (1857) – Held that enslaved people were not citizens and could not sue in federal court.

29. Gibbons v. Ogden (1824) – Gave Congress power to regulate interstate commerce, striking down a New York steamboat monopoly.

Taylor v. River Authority (1830) – Declared that river navigation rights belonged exclusively to state governments. (✗ Fake)

Lesson 1: Constitutional Structure & Separation of Powers (Articles I–III)

This lesson introduces the foundational structure of the U.S. Constitution, focusing on Articles I, II, and III and the doctrine of Separation of Powers. Students will learn how governmental authority is divided among the Legislative, Executive, and Judicial branches, and why that structure matters for liberty, accountability, and the rule of law.

This lesson sets the groundwork for future study of judicial review, standing, federalism, and constitutional interpretation. This lesson may take longer than you might expect because of the nature of reading the Articles and taking the time to understand them fully. This is completely normal. Please feel free to break the lesson into the number of sessions you need based on the amount of time it takes and on balance with your other studies. I hope you will agree by the end of this course that it was all worth it in the end!

Content Note (Please Read Before Starting Lessons)

As you read through Articles I–III of the Constitution, you will come across some prejudicial language that reflects the attitudes and inequalities of the 1780s. Terms like “Indians not taxed” and the “Three-Fifths Compromise” are rooted in racist systems that denied full personhood and political power to many groups.

This language does *not* represent our values today.

The racially discriminatory provisions were effectively nullified by the Reconstruction Amendments passed after the Civil War:

- The 13th Amendment (1865) abolished slavery.
- The 14th Amendment (1868) granted equal protection and due process, overriding the legal basis for racial inequality.
- The 15th Amendment (1870) guaranteed the right to vote regardless of “race, color, or previous condition of servitude.”

While some legal scholars and advocates have proposed a constitutional amendment to remove the offensive language, this has not occurred at a federal level. Therefore, while the effect of the language has been nullified, the problematic clauses remain in print.

Optional Links for Students/Families

These explain why the Constitution retains outdated or superseded language:

- **Why the Constitution rarely has language removed** (National Constitution Center):
<https://constitutioncenter.org/the-constitution/full-text>
(Their explanatory notes discuss how amendments override earlier text without deleting it.)
- **Amending the Constitution doesn't involve editing the original text** (Annenberg Classroom):
<https://www.annenbergclassroom.org/constitution/>
(Explains how changes take effect through amendments, not revision.)
- **Historical explanation of clauses that remain but no longer have force** (Library of Congress):
<https://constitution.congress.gov/browse/article-1/>
(Shows superseded clauses and the amendments that replaced them.)

Assignments

U.S. Constitution, please Read:

- Article I – Legislative Branch
- Article II – Executive Branch
- Article III – Judicial Branch

The Constitution, printable:

<https://constitutioncenter.org/media/files/constitution.pdf>

The Constitution, audio/video:

<https://www.youtube.com/watch?v=QZxBOzwwBQE>

(Article I starts at about the 55 second mark of the video.)

Separation of Powers and Checks and Balances: Crash Course Government and Politics #3

<https://www.youtube.com/watch?v=0bf3CwYCxXw>

Optional Deep Dive Resource:

The Constitutional Center Classroom Resources
Article I

<https://constitutioncenter.org/education/classroom-resources-by-topic/article-i>

Article II

<https://constitutioncenter.org/education/classroom-resources-by-topic/article-ii>

Article III

<https://constitutioncenter.org/education/classroom-resources-by-topic/article-iii>

Note: This unit is particularly relevant if you are interested in pursuing AP U.S. Government & Politics course credit. Many homeschoolers opt to pursue AP credits by auditing the course, which requires a formal application process.

You can find out more about the content required for the course here:

<https://apstudents.collegeboard.org/courses/ap-united-states-government-and-politics>

Auditing AP U.S. Government & Politics:

<https://apcentral.collegeboard.org/courses/ap-united-states-government-and-politics/course-audit>

By the end of this lesson, you should be able to:

- Identify the powers and responsibilities of each branch of government
- Explain the purpose of separation of powers
- Describe how checks and balances limit government authority
- Understand why the judiciary is structured differently from Congress and the President

Lesson 1 Worksheet

Use this worksheet to take notes during your reading of Articles I-III. There will be additional questions to complete after you have completed this week's videos and lecture.

Article I

What are the main powers and responsibilities outlined?

Article II

What does this article establish?

Article III

What are the key points?

Articles I–III: Structure, Power & Constitutional Design Homework

After completing the Lesson 1 lecture and assigned readings, respond thoughtfully to the questions below. Use complete sentences and support your answers with ideas or language from Articles I–III of the Constitution.

1. Why did the Framers divide governmental power among three separate branches instead of creating one strong central authority?

2. Based on Articles I–III, which branch of government appears to have the most power? Which appears to have the least? Explain your reasoning.

3. Article I is significantly longer and more detailed than Articles II and III. What does this suggest about the framers' priorities or concerns?

4. How do checks and balances protect individual liberty? Can you identify a situation where this system might slow government action?

5. Why are federal judges appointed for life during “good behavior”? How does this design choice protect judicial independence?

6. If Congress passes a law that may violate the Constitution, what role does the judiciary play? Why is that role essential in a constitutional system?

7. What risks arise if one branch of government becomes more powerful than the others?

8. Should the Constitution be interpreted strictly according to its text, or broadly to adapt to modern circumstances? Briefly explain your position.

9. Which branch of government do you believe has the greatest impact on your daily life? Why?

10. Why is understanding Articles I–III essential before studying Supreme Court cases and constitutional disputes?

ANSWER KEY

1. Why did the Framers divide power among three branches?

To prevent tyranny by concentrating power in one authority and to create internal limits on government through separation of powers.

2. Which branch appears most powerful? Least powerful?

Congress appears most powerful due to Article I's length and enumerated powers; the judiciary appears least powerful textually, relying on interpretation rather than direct enforcement.

3. What does Article I's length suggest?

It reflects the framers' belief that Congress would be the dominant branch and required the most detailed structure and limits.

4. How do checks and balances protect liberty?

They prevent abuse by allowing each branch to restrain the others, though they can slow decision-making in emergencies or times of political conflict.

5. Why life tenure for judges?

To ensure judicial independence by insulating judges from political pressure, allowing decisions based on law rather than popularity.

6. Judiciary's role if a law is unconstitutional?

To interpret the Constitution and invalidate laws that conflict with it, ensuring constitutional supremacy.

7. Risks of one branch dominating?

Loss of constitutional balance, erosion of liberty, weakened accountability, and increased risk of authoritarian governance.

8. Strict vs. broad interpretation?

Strong answers acknowledge the tension: strict interpretation preserves constitutional limits, while broader interpretation allows adaptation to modern realities.

9. Branch with greatest daily impact?

Often the executive branch due to enforcement through agencies and regulations; reasonable alternatives may be accepted with justification.

10. Why Articles I–III first?

They establish the framework necessary to understand how constitutional disputes arise and how courts resolve them.

Lecture 1: Intro + Talking Points on Articles I–III of the Constitution

Intro to Articles I–III

When the Framers wrote the Constitution in 1787, their biggest concern was power. They had just fought a revolution against a king who abused power, and they did not want to replace one kind of tyranny with another.

At the same time, they knew the Articles of Confederation had left the national government too weak. The challenge was to create a government that was strong enough to work, but limited enough to remain free.

Their solution was separation of powers. Instead of putting all authority in one place, the Constitution divides power into three branches: legislative, executive, and judicial. Each branch has its own responsibilities, but also limits on what it can do. This design forces the branches to share power and check each other.

- Article I sets up the legislative branch, Congress — the branch closest to the people.
- Article II creates the executive branch, led by the President.
- Article III establishes the judicial branch, headed by the Supreme Court.

Together, these first three articles create a framework that has lasted more than 200 years. Understanding these articles is the key to understanding how American government actually works — and also why it often feels slow, complicated, or full of tension.

That tension is by design. The Framers wanted a system that prevents any one person or group from dominating.

Article I — The Legislative Branch

See detailed talking points document for bullet breakdown.

Article II — The Executive Branch

See detailed talking points document for bullet breakdown.

Article III — The Judicial Branch

See detailed talking points document for bullet breakdown.

Lecture1: Articles I–III of the Constitution

Article I – The Legislative Branch

- Article I establishes the legislative branch (Congress), which is the lawmaking body of the federal government.
- Congress is bicameral, made up of the House of Representatives and the Senate.
- The House represents the people directly, with membership based on population; the Senate represents the states equally, with two senators each.
- This design balances large state vs. small state interests—a compromise from the Constitutional Convention.
- Article I, Section 8 lists the enumerated powers of Congress: taxation, regulation of commerce, raising armies, declaring war, coining money, and more.
- It also includes the Necessary and Proper Clause (the 'elastic clause'), giving Congress implied powers to carry out its duties.
- Article I shows that the Framers intended the legislative branch to be the center of policymaking and the most directly accountable branch to the people.

Article II – The Executive Branch

- Article II establishes the executive branch, led by the President.
- The President is responsible for enforcing laws passed by Congress.
- The Constitution vests the executive power in one person—unlike the plural executive models some states had—creating unity and accountability.
- Presidential powers include: serving as Commander in Chief, negotiating treaties (with Senate approval), appointing judges and officers, and ensuring laws are 'faithfully executed.'
- The President also has the power to veto legislation, although Congress can override with a two-thirds majority.
- Article II includes the Electoral College system for selecting the President, reflecting a compromise between direct popular vote and legislative choice.
- While Article II is shorter and less detailed than Article I, its brevity has allowed for significant growth in presidential power over time.

Article III – The Judicial Branch

- Article III establishes the judicial branch, centered on the Supreme Court and any inferior courts Congress creates.
- The Constitution provides for judicial independence: judges serve during good behavior (life tenure) and cannot have their salaries reduced.
- The judiciary was initially seen as the 'least dangerous branch' (Alexander Hamilton, Federalist No. 78), because it lacked control of the purse (Congress) or the sword (President).

- Article III extends the judicial power to all cases arising under the Constitution, laws, and treaties of the U.S.
- It also covers cases involving ambassadors, admiralty, disputes between states, and conflicts between citizens of different states.
- Importantly, Article III recognizes judicial review implicitly by granting courts the power to decide cases under the Constitution—though this was fully articulated later in *Marbury v. Madison* (1803).
- The creation of a federal judiciary was crucial for ensuring that federal law remained supreme and uniformly applied.

Articles I–III of the Constitution – Student Notes Worksheet

Article I – The Legislative Branch

1. What is Congress and why is it divided into two houses?

2. What are the main powers of Congress?

3. What is the 'Necessary and Proper Clause' and why is it important?

Article II – The Executive Branch

4. Who leads the Executive branch and what is their main responsibility?

5. What are some of the President's specific powers?

6. How is the President chosen?

Article III – The Judicial Branch

7. What court does Article III establish?

8. How do judges remain independent?

9. What kinds of cases fall under federal judicial power?

10. What is judicial review and why does it matter?

Reflection Questions

11. Which branch do you think has the most power today, and why?

12. Why do you think the Framers divided power among three branches instead of just one?

Answer Key — Articles I–III of the Constitution

Article I – The Legislative Branch

What is Congress and why is it divided into two houses?

Congress is the national lawmaking body of the United States, and it is divided into two houses—the **House of Representatives** and the **Senate**—to balance power between large and small states and to ensure that laws are carefully considered from two perspectives.

What are the main powers of Congress?

Congress has the power to make laws, raise and collect taxes, declare war, regulate interstate and foreign commerce, coin money, approve budgets, and oversee federal agencies. It also has impeachment and confirmation powers.

What is the “Necessary and Proper Clause” and why is it important?

The Necessary and Proper Clause gives Congress the authority to make laws needed to carry out its listed (enumerated) powers. It is important because it allows flexibility and enables the government to function effectively as new issues arise.

Article II – The Executive Branch

Who leads the executive branch and what is their main responsibility?

The **President** leads the executive branch, and their main responsibility is to enforce or carry out the laws passed by Congress.

What are some of the President’s specific powers?

The President can serve as Commander in Chief of the military, negotiate treaties, appoint federal judges and executive officials (with Senate approval), issue executive orders, grant pardons, and represent the United States in foreign affairs.

How is the President chosen?

The President is chosen through the Electoral College system, where citizens vote in state elections and electors cast the formal votes for President.

Article III – The Judicial Branch

What court does Article III establish?

Article III establishes the **Supreme Court of the United States**, and allows Congress to create lower federal courts.

How are judges kept independent?

Federal judges serve **during good behavior** (essentially for life) and their salaries cannot be reduced while they are in office. These protections prevent political pressure and help maintain judicial independence. Unit 2 will delve into which officers of the court are elected, and how that may impact their decisionmaking.

What kinds of cases fall under federal judicial power?

Federal courts hear cases involving the Constitution, federal laws, treaties, disputes between states, cases between citizens of different states, maritime issues, and cases where the United States is a party. The lesson on *Marbury v. Madison*, as well as the lesson about how the Supreme Court works will delve into this issue in more depth.

What is judicial review and why does it matter?

Judicial review is the power of the courts to decide whether laws or government actions violate the Constitution. It matters because it ensures that all branches stay within constitutional limits and protects individual rights.

Reflection Questions

(Teacher key: acceptable high-level responses, not a single "correct" answer.)

Which branch do you think has the most power today, and why?

Possible answers:

- Some may argue the Executive Branch because presidential actions influence law, policy, and national attention.
- Others may argue Congress because it controls funding and legislation.
- Others may argue the Judiciary because judicial review can overturn laws and shape policy.

Why do you think the Framers divided power among three branches instead of just one?

To prevent tyranny, ensure no single person or group could dominate the government, and create a system of checks and balances where each branch limits and supports the others.

Which branch do you personally think affects your daily life the most? Explain.

Possible answers:

- Executive (laws enforced, federal agencies, day-to-day regulations)
- Legislative (laws that govern daily life, taxes, education policy, etc.)
- Judicial (rights, protections, rulings on major issues)

Any thoughtful explanation is acceptable.

Lecture 1.5 Separation of Powers — Theoretical & Historical Background

In the fall of 2007, I took “Separation of Powers,” a seminar course, co-taught by Justice Antonin Scalia and his former clerk professor Michael D. Ramsey. I point this out because I think it is important to understand that a professor or teacher is consciously choosing which resources or excerpts to assign to students, and it is important as a student to understand the lens or perspective that teachers are glancing through when sharing their knowledge. The reading selections, or even assigned cases, tell a story.

I share this also because Justice Scalia was a staunch originalist, and a statement he made always stuck with me, “just because something is a good idea [as in a law], doesn’t mean that it’s constitutional.” While I am not an originalist, I found his simple statement to be a sort of cheat code mentality for determining surface level constitutionality.

I also encourage students to consider how Justice Scalia had such a strong friendship with Justice Ginsburg, who falls on the opposite end of the jurisprudential (and political) spectrum. To me this suggests, and underscores, the potential for civility and mutual respect that exists within the legal profession. Perhaps there is something to learn from these two friends. Now, onto the excerpts.

Montesquieu, *The Spirit of the Laws*, Book XI, Section 6 (1748)

Montesquieu established one of the foundational principles of constitutional design: there can be no liberty if the legislative, executive, and judicial powers are concentrated in the same hands.

When power is consolidated, the result is arbitrary control, violence, oppression, and tyranny.

He wrote:

“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty.”

This simple but radical assertion shaped modern constitutionalism. Montesquieu believed that freedom depends not on who governs, but how power is divided.

The Pennsylvania Gazette, April 28, 1784

Early American thinkers echoed Montesquieu’s warning. The Gazette described the separation of powers as essential to maintaining the balance of liberty — three distinct branches, each wielding separate authority, working together yet constrained by mutual dependence. The goal was to prevent any one branch from acquiring all the power “necessary to do everything,” a hallmark of monarchy and despotism.

M.J.C. Vile, *Constitutionalism and the Separation of Powers*

Vile summarizes the modern structure:

- Each branch must be confined to its own function and not allowed to intrude on another.

- The legislative, executive, and judicial powers are three distinct forms of governmental action, each with a unique role.
- Separation operates as both a functional necessity and a check on arbitrary power.

This framework aims not for efficiency, but for restraint — the prevention of abuse through structural design.

The Federalist Papers: Madison and Hamilton on Separation of Powers

James Madison, Federalist No. 47 (February 1, 1788)

Madison warned that tyranny arises when:

“The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”

Madison acknowledged that no political system can enforce absolute separation — some overlap is inevitable — but the Constitution’s structure distributes authority enough to prevent concentration of power.

He saw the American system as a hybrid of separation and mutual control: the branches are separate in function but intertwined through checks and balances.

James Madison, Federalist No. 48 (February 1, 1788)

Madison expanded on the dangers of legislative dominance.

He observed that the legislative branch, because it controls the purse and defines the law, will always tend to “draw all power into its impetuous vortex.”

Unlike monarchs, legislators act collectively and can justify their overreach as the “will of the people.”

Therefore, structural limits — not mere declarations — must restrain them. Madison urged the framers to build practical barriers between branches, not rely on good intentions or written words alone.

James Madison, Federalist No. 51 (February 8, 1788)

Here, Madison articulated perhaps the most famous argument for the Constitution’s design:

“Ambition must be made to counteract ambition.”

He recognized human nature as constant — people in power will seek more of it. The solution was not to hope for virtue, but to design a system where the interest of each branch compels it to resist encroachment by the others.

Madison also emphasized the need for judicial independence. Judges must hold permanent positions — not subject to popular election — so they can defend minority rights and the Constitution itself without fear of reprisal.

Alexander Hamilton, Federalist No. 70 (March 18, 1788)

Hamilton turned to the executive branch, defending the need for a single, energetic executive.

He argued that unity promotes both accountability and effectiveness.

Multiple executives create confusion, delay, and excuses — one person must be responsible so the public can assign praise or blame.

He wrote that decisiveness in execution prevents paralysis in moments of crisis and guards against legislative encroachment.

“Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number.”

Hamilton viewed a vigorous executive not as a threat to liberty, but as its protector — so long as that energy is constrained by law and oversight.

Alexander Hamilton, Federalist No. 78 (May 28, 1788)

In No. 78, Hamilton shifted to the judiciary, calling it the “least dangerous branch.”

Unlike the legislature, which controls the purse, or the executive, which commands the sword, the judiciary possesses “neither force nor will, but merely judgment.”

Its weakness, however, is balanced by its essential role: interpreting the Constitution and ensuring that acts of government remain within its bounds.

Hamilton argued:

“The interpretation of the laws is the proper and peculiar province of the courts. A Constitution is, in fact, and must be regarded by the judges, as fundamental law.”

Judges, therefore, must be independent and permanent, free from political influence, to safeguard both constitutional limits and minority rights. Their permanence is justified by the expertise and long study required to master the law. Judicial tenure protects not privilege, but the Constitution itself — ensuring consistency, stability, and the rule of reason over the passions of the moment.

Summary

The Founders' commitment to separation of powers was not about efficiency but about liberty through structure.

- Montesquieu warned that unified power destroys freedom.
- Madison designed a system where power checks power.
- Hamilton ensured that energy and judgment coexist with restraint.

Together, they built a framework that prevents tyranny not by trusting leaders, but by dividing and balancing their authority.