

THE CONSTITUTIONAL CONVENTION

1. The Need for Improvements to the Articles of Confederation	2
2. The Constitutional Convention	4
3. Events Surrounding the Creation of the Constitution	6
4. Disputes Surrounding the Creation of the Constitution	9
5. Federalist Views of the Proper Government	11
6. Anti-Federalist Views of the Proper Government	13
7. Article 1 of the Constitution	16
8. Article 2 of the Constitution	18
9. Article 3 of the Constitution	20
10. Article 4 of the Constitution	22
11. How Articles 1-4 Created a More Perfect Union.....	24
12. Articles 5-7 of the Constitution.....	26
13. The Need for a Bill of Rights.....	28
14. The First Amendment	30
15. The Second, Third, Ninth and Tenth Amendments	33
16. The Fourth and Fifth Amendments.....	35
17. The Sixth, Seventh and Eighth Amendments	38
18. The Thirteenth, Fourteenth, Fifteenth and Nineteenth Amendments	41
19. Amendments Addressing Matters of the President and Congress (12, 17, 20, 22, 23, 25, 27)	43
20. The Remaining Amendments (11, 16, 18, 21, 24, 26).....	45

1. The Need for Improvements to the Articles of Confederation

I. The Articles of Confederation's purpose

After the Declaration of Independence was signed, the first major attempt at creating a nation involved the creation of the Articles of Confederation. The ultimate goal of the Articles of Confederation was to create a workable unity between the thirteen states then in existence and to create a system that would also apply to later states. Thus, Article I named the Confederacy that existed between the states "The United States of America." Article III then elaborated on the goal of unity by stating the specific areas that the states felt it was necessary for unity to exist in. The states made it clear that pursuant to this goal of unity, they intended to "...enter into a firm league of *friendship* with each other, for their *common defense*, the *security* of their *liberties*, and their *mutual* and *general welfare*."

a. Example:

- i. In constructing houses, wooden studs are often used to create the walls that hold the house up. Each stud can only support a limited amount of weight, however, and so many studs have to be used. When two studs are nailed together though, the amount of weight the combined studs can support is more than twice the weight that one stud can support. Unifying the parts used in construction thus provides an added measure of strength that does not exist among the individual parts.

b. Thoughts:

- i. Would it have been possible for just one of the states, fighting alone, to win the war for independence?
- ii. Would it have been possible to win the war for independence if each state had appointed its own general to lead in the war (thus creating 13 leaders for the troops to try and follow)?
- iii. To what extent did the willingness of the states to set aside some differences and join together to fight for independence give them the power necessary to achieve independence?

II. Problems with the Articles

Despite the purpose of striving to create unity among the states, Article II of the Articles of Confederation reflects the reason why the Articles did not accomplish this purpose. Article II states: "Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled." In other words, the states retained most of the power that Congress needed to accomplish the goals set forth in Article III. As is reflected throughout the remaining portions of the Articles, the states simply were not willing to give Congress the power necessary to create a system of unity among the states. In other words, the states had used the Articles of Confederation to express good intentions, but had failed to give Congress the power to make those good intentions a reality.

a. Example:

- i. Under the Articles of Confederation, Congress was unable to provide enough food, clothes, equipment, and manpower for the war. At Valley Forge and Morristown, many soldiers suffered and died as a result of a lack of necessary provisions. At Valley Forge, soldiers had to live on a mixture of flour, water, and salt for six weeks. This caused 3,000 of the 8,000 soldiers to abandon General Washington and return home. Approximately 200 officers resigned their commissions. And, sadly, over 2,000 soldiers died of starvation and disease.
- ii. George Washington attributed the loss of these soldiers directly to the inability of Congress to enforce any of the purposes stated in the Articles of Confederation. The Articles of Confederation did not give Congress the power to collect taxes. Congress could only ask the states for money. This meant that if the states did not give the money Congress asked for to provide for the soldiers, Congress had no other means to provide for the needs of the soldiers. Congress also could not enforce any of its laws, and so the laws it passed were nothing more than recommendations for the states to follow.
- iii. The Articles also did not create an executive branch nor did the Articles create a judiciary. Thus, there was no power given to Congress to make unity among the states a reality.

b. Thoughts:

- i. How effective would it be for the government to pass a “recommendation” that nobody take candy from the store without paying for it? In other words, if people were not punished in anyway for stealing from stores, would the stores be able to rely on the goodness of people to pay for things, or would theft be rampant if people never got in trouble for stealing?
- ii. Would people follow the speed limit if the police never wrote tickets?
- iii. Would anyone be willing to pay taxes if Congress had no power to penalize for tax evasion? Would you be willing to pay taxes if you knew that your friends did not pay taxes?

2. The Constitutional Convention

I. It was necessary to revise the Articles of Confederation

After a few years of operating under the Articles of Confederation, it became clear that something must be done to keep the states united. The Continental dollar was almost worthless, the economy was deeply depressed, riots were breaking out, and the states were becoming bitterly divided. In light of all of this, Congress issued a resolution on February 21, 1787 to call a convention to revise the Articles of Confederation. Under this resolution, the convention was supposed to report to Congress “such alterations and provisions as shall ... render the federal constitution adequate to the exigencies of Government and the preservation of the Union.” All of the states except for Rhode Island endorsed this resolution, and each state appointed delegates to attend the convention. These delegates were to debate and discuss what was necessary to create the unity sought for in the Articles of Confederation.

a. Example:

- i. The Virginia delegates came with a prepared plan of how to strengthen the national government to resolve many of the problems that came from a weak centralized government. This plan was known as the “Virginia Plan” and provided the basis for the discussions in the convention.
- ii. A plan that came to be known as the “New Jersey Plan” was presented after the “Virginia Plan.” This plan sought to retain the equality of the states and to retain provisions that closely resembled the Articles of Confederation. The differences between these two plans led to the recommendation of the “Great Compromise.” This compromise made Congress what it is today by giving the states equal representation in the Senate to benefit the smaller states and representation according to population in the House to benefit the larger states.
- iii. The delegates from different states could not agree on how to handle the issue of slavery. Eventually, the delegates compromised and agreed to stop bringing slaves into the United States so long as the practice of slavery could continue with the slaves already in the United States.
- iv. Disputes and debates ensued for four months at the convention. Once the final recommendation, or Constitution, was approved by the convention, it was sent to Congress for approval. Congress unanimously passed a resolution to send the Constitution to the states for ratification by the method specified in the Constitution.

b. Thoughts:

- i. What is the role of compromise in creating a unified system of government?
- ii. Are there issues that are more appropriate to compromise on than others? Are there certain issues that people should never be willing to compromise on?

- iii. If you were a delegate at this convention, would you agree to a compromise to allow slavery to continue, or would you stand against slavery, regardless of the slave states that may decide to leave the United States to continue their practice of slavery?
- iv. Can compromise be used to accomplish good things? Can it also be used to accomplish bad things? How can you tell the difference?

c. Example:

- i. While there were some compromises made at the convention, the convention ultimately sought for *consensus*, or all being in agreement, on all issues that it could. Those in attendance at the convention would continue to talk things out until everyone could agree, even though there may have already been enough in agreement on the issue to allow it to pass when voted upon.
- ii. Because of the delegates' devotion to achieving consensus, there were only three major compromises that took place at the convention. All other times the majority or all of the delegates were persuaded to change their positions, as is seen by the discussion on how to choose Senators. The delegates from Virginia wanted to have the House of Representatives select Senators. Others wanted the state legislatures to choose the Senators. In the end, because of the commitment of the delegates to talking the issues through until all could agree, the vote to have the state legislators choose the Senators was made "unanimously."

d. Thoughts:

- i. Is there greater power in consensus or in compromise?
- ii. In what ways can you seek to help others change their positions or see truth?

3. Events Surrounding the Creation of the Constitution

I. Shays's Rebellion one month before the convention was called

Under the Articles of Confederation and during the Revolutionary war, inflation was taking a serious toll on the economy. Each state tried to deal with the economic problems in various ways, but no state seemed able to find a fix to the problem. Many jobs were lost, trade slowed, and many citizens found themselves with debts that they could not pay. During this time, people were imprisoned for failure to pay debts, and soon many people were facing prison sentences. In desperation, mobs of farmers assembled to prevent the courts from assembling so that there would not be any more judgments for debts issued against them. Massachusetts responded to these mobs by making a proclamation against unlawful assemblies and sent the militia to disperse these mobs. At this same time, Daniel Shays led a group of 1,100 men in a desperate attempt to prevent the supreme court of Massachusetts from holding its regular sessions. Shays's group was met by an armed militia that killed many of the farmers in the group.

People in America recognized the serious implications of Shays's rebellion. Shays and those he led were attempting to do the same things that those who helped to declare America's independence did in 1774 - 1776. In other words, Shays was a clear sign that those in America were reaching the same level of frustration with the government as those in America under the rule of the British. It was quite evident that something needed to change in America. While the people wanted freedom, they also needed economic stability to allow them to exercise their newly found freedoms.

a. Example:

- i. A little before Shays's rebellion took place, George Washington had already expressed sadness over the condition of America. He wrote to James Madison and said:

No day was ever more clouded than the present.... We are fast verging to anarchy and confusion.... How melancholy is the reflection.... What stronger evidence can be given of the want of energy in our government than these disorders? ... A liberal and energetic constitution, well guarded and closely watched to prevent encroachments, might restore us.

- ii. Some have said that during this time America was experiencing the pains of being born as a free nation. No one had ever created a system of freedom like that of America, and so there were no real models or guides for the Founders to follow. While the Founders were slowly feeling their way towards creating a free country, they were also watching sadly as their attempts at freedom were producing suffering, bankruptcy, and despair.
- iii. Many that were suffering thought that it would be better to return to a system of Ruler's Law, or a system similar to what Britain used. George Washington received a letter from one of his officers expressing this

sentiment and showing that it was reflected among many of the troops. The troops were in rags, they had not been paid, and their food was too meager to even use as food for pigs. This officer begged Washington to accept the crown and serve as George I of the United States. He told Washington that the army would make sure that he was put in this position of power. Washington was horrified at the request and did all that he could to encourage his troops to maintain the cause of freedom.

b. Thoughts:

- i. In the midst of these hard times, what do you think gave those in America the hope to continue trying?
- ii. If you were in the position of a Founding Father, would you have continued to try and find a way to establish freedom, or would you have opted to return to a system of government that you knew would at least put food in front of people?
- iii. If you were in the position of a Founding Father, what would you say or do to try and help people have hope to continue to press forward?

II. The states were required to ratify the Constitution after it was signed

Once the delegates at the Constitutional Convention signed the Constitution, the Constitution had to be distributed across America to see if it was accepted by the states. Many people read it themselves and debated over it. Some state legislatures approved the new Constitution unanimously. Other state legislatures were sharply divided. In order to persuade the New York legislature to ratify the new Constitution, Alexander Hamilton, James Madison, and John Jay wrote the Federalist Papers, a series of essays explaining the merits of the new Constitution. These essays were published in the newspapers, and were read by many.

In the end, Massachusetts (the second largest state at the time) voted to ratify the Constitution by a close margin. If 10 people had decided to change their vote to ratify the Constitution, Massachusetts would not have supported the Constitution. New Hampshire was even closer where a switch of only 6 votes would have changed the outcome. The vote in Virginia followed where a switch of 4 votes would have meant that Virginia did not accept the Constitution, New York then ratified the Constitution with a final tally where only 2 votes would have changed the outcome, and finally Rhode Island ratified the Constitution with a final tally of where a change of only 1 vote would have meant it did not support the Constitution.

a. Example:

- i. While the Constitution required 9 of the 13 states to ratify the Constitution, it would have been disastrous to try and begin a new country without the support of each state involved. The geography of the country also would have made it quite hard to work around states like New York or Virginia that came so close to not ratifying the Constitution.

- ii. Alexander Hamilton, through his tireless efforts to persuade New York to ratify the Constitution, is credited with being the reason that New York voted to ratify, even though it was still only by a small margin.

b. Thoughts:

- i. With as close as the vote came in some states, it strongly appears that it was a miracle indeed that the Constitution was ratified by all of the states.
- ii. In what ways can you be like Alexander Hamilton today to help persuade others of the goodness of the Constitution? Will your efforts contribute to helping enough people maintain the cause of freedom and the greatness of our country?
- iii. Alexander Hamilton did not write the Federalist Papers for all of America. He wrote them in hopes of persuading those in New York to ratify the Constitution, yet his work had a profound impact on the rest of the nation. What things can you focus on in your local communities that may have lasting impacts throughout the nation?

4. Disputes Surrounding the Creation of the Constitution

I. The Constitution created an untested form of government

The Founding Fathers were well educated and were well aware of the types of government that had existed in the history of the world. Many people were wary of the Constitution as it appeared to place too much power in the federal government. As no other similar form of government had ever existed, it was hard for people to measure how successful this system of government might be.

a. Example:

- i. Inventors often have to try time and time again to invent something that works and that is useful. Thomas Edison had to try thousands of different materials to produce a useable light bulb, which meant that most of Edison's attempts were failures to bring about his desired results.

b. Thoughts:

- i. What made America willing to try an entirely new form of government? Was there any risk of failure associated with this new government?
- ii. Has this form of government proven itself worthy of our loyalty?
- iii. What is the proper course to pursue when problems arise in America today? Should something new be pursued, or should efforts be focused on fixing what is already here?
- iv. What would have to happen in your life for you to be willing to try an entirely new form of government?

II. The states did not want to lose their sovereignty or identity

While all of the states in America were fighting for independence, not everyone in America had envisioned the creation of a national government as a product of winning the Revolutionary War. The states viewed themselves as having their own complete system of government. Likeminded groups of people tended to congregate to the same areas, and so the thinking of different states was often a representation of the groups of people that had gathered in those states. Thus, while these groups could be sure of their place inside their state, they were very unsure of their place inside a national structure. In other words, they did not know if the things that they cared about were what others in the rest of America cared about.

a. Example:

- i. Students comfortable after a few years at a school know pretty well how things work at their school, and they usually know what to expect each day and what is required of them. However, when it comes time to graduate and attend a new school, such as college, those same students will usually experience a lot of anxiety and stress with the move to the new school. They become part of a bigger system and discover that many

of their beliefs and expectations may not correspond well with the beliefs or expectations of a majority of the other students at the new school.

- ii. Professional football with the NFL is a big deal in many states, yet Utah and some other states do not have a professional football team. Besides football, each state tends to have its own way of life, and there are differences in restaurants, stores, clothing styles, dialects, cars, religions, and points of view.
- iii. How the interests of each state were represented in the new federal government was an issue of great concern to the smaller states. They feared if they were represented on the basis of population alone that the interests of the people in their states would essentially be swallowed up by the interests of the rest of the people in the country. This was an issue that the Founding Fathers were never able to fully resolve, and this concern is what led to the acceptance of the “Great Compromise” that enabled smaller states to have an equal say with the larger states in the Senate.

b. Thoughts:

- i. What types of groups do you associate with? What types of people do you relate to?
- ii. How would you try to manage bringing many different groups of people together to work towards a shared goal?
- iii. Is it possible to use the differences between groups as a way to help unify a nation, or do differences lead only to divisions in a nation?

5. Federalist Views of the Proper Government

I. The Federalists supported the new Constitution

The Federalists saw the weakness of the United States of America under the Articles of Confederation and were convinced that a stronger national government was essential to maintaining America as one nation. While they provided many checks and balances in the stronger system of government created under the Constitution, those that did not support the Federalists still feared giving the national government as much power as the Constitution gave it. America had just fought a war for independence to free itself from the oppressions of a powerful government, and so many feared that America was simply creating a government that would end up the same as the one they had just fought to be free from. The Federalists were convinced though that the stronger government was essential to preserving the country.

a. Example:

- i. In sports there is usually a referee, umpire, or judge of some sort that watches the players to ensure that all of the rules are followed. Often, when a referee makes a call that a rule has been broken, one team (and its fans) are upset by the ruling. They feel that their team did nothing wrong. Most fans and players do not like the referees, yet the referees make it so that the game can take place. If there were no referees to ensure that rules are followed, it would be impossible for the teams to play and to agree all of the time as to which players are at fault when something goes wrong.
- ii. While states are all part of this nation, they are often in competition with each other. The states compete for business, for the interests of their citizens, and for political advantages. Often, states will pass laws attempting to better their economic position and to hurt neighboring states' interests. Without a national government to act as a referee between conflicting state interests, it would be very hard for the states to agree to very much on their own.

b. Thoughts:

- i. Most people can understand the need for a referee to make sure that the rules are followed. The main concern with having a referee in government though is how to stop the referee if he or she starts making bad calls on a consistent basis. The question at the time of the Constitution was how to give enough power to the government to act as the referee, yet also how to limit the power of the government enough to prevent it from taking over the game, or society.
- ii. Did the Founders give the government too much power? Or, are there examples where the government did things to people that it should not have?
- iii. Did the Founders give the government too little power? Or, are there examples where people wanted the government to do something, but it was not able to because it lacked the power?

II. The Federalists supported an executive in the national government

One main problem that existed under the Articles of Confederation was that Congress could not enforce the laws it passed. The Federalists wanted to remedy this situation by creating an executive department that had power to enforce the law. This department, they felt, needed to be headed by one person, the President of the United States. Many feared that giving one person this much power would surely result in an oppressive government again, and so the Founders took special care to place many checks on the power of the President. Despite these checks, the fear remained that concentrating all of the executive power into one position would lead to oppression. The Federalists felt though that the only way to create a government strong enough to deal with the problems that existed was to place this power into the hands of one President.

a. Example:

- i. The police are the most common example of how the executive power works in our daily lives. If a law is broken, the police seek to find the person who broke the law and bring them before a judge to be punished according to what they did wrong. While the police you see in your city are part of your state's executive branch and are not under the President, they represent the idea of what the Federalists viewed as necessary to maintaining cooperation between the states. The national government had to have a way, like the police, to enforce its laws. Otherwise, the laws would be meaningless if they could not be enforced.

b. Thoughts:

- i. Are there any alternatives to having police to make it so that the laws are followed?
- ii. What types of things do your parents do to make it so that you follow the rules in your home? If your parents never punished you for not following the household rules or for not doing your chores, would you choose to follow the rules or do your chores? Do you think that the states would be any different?

6. Anti-Federalist Views of the Proper Government

I. Most opposition to the Constitution came because there was no Bill of Rights

The anti-Federalists, or those opposed to the system of national government created by the Constitution, based most of their opposition on the fact that the Constitution did not include a list of rights retained by the people. The anti-Federalists were certain that if the rights of the people were not listed, then the new, more powerful national government would eventually take those rights from the people. They viewed the inclusion of a Bill of Rights as an essential check on the power of the government to prevent the government from becoming oppressive. This view prevailed so strongly that it became essential for George Washington and other leaders to promise the states that if they ratified the Constitution, they could all submit proposals for changes to the Constitution that would then be considered in the first session of Congress under the new Constitution. The states took this promise seriously and submitted a total of 189 proposed changes.

a. Example:

- i. The Constitution required 9 of the 13 states to ratify the Constitution in order for it to take effect. Without the promise of an inclusion of a Bill of Rights, it is very likely that the Constitution would never have been ratified by 9 states. The anti-Federalists thus had a major impact on the Constitution by inspiring the inclusion of 10 major amendments to the Constitution shortly after it took effect.
- ii. A Bill of Rights was discussed at the Constitutional Convention, but after much debate the idea was rejected. It was argued that in creating a list of rights, some rights might be forgotten or left out on accident. If any rights were left out, the existence of a list of rights would be interpreted to mean that the forgotten rights must not have been as important as the other rights that were listed. As a result, in an attempt to preserve all rights, the Founders did not include specific protection for any rights.
- iii. The Ninth Amendment seeks to alleviate this fear by stating that the list of rights in the Bill of Rights should not be used to deny the existence of other rights still maintained by the people.

b. Thoughts:

- i. Under the Ninth Amendment, how can a person know when rights that are not listed should be protected as vigorously as those listed in the other amendments? In other words, how is it possible to know what rights not mentioned in the Constitution are just as important as those listed in the Bill of Rights?
- ii. Today, people discuss many rights. Some people want a right to work, some want a right to healthcare, others want a right to marry any person of their choosing, while others advocate that the environment, including trees and animals, have rights too. Is the Ninth Amendment an effective way to protect important rights that were not listed in the Bill of Rights, or does it

serve more to give rise to arguments that the rights of trees and other such rights should be constitutionally protected?

- iii. If your mother gave you a list of important chores to do while she was gone, and then told you that the list did not include everything that you needed to do, how would you try and determine what else to do? How should judges decide what other rights would have been put in the Bill of Rights if the Founders had thought about those rights?

II. Opposition to the Constitution also arose due to the scope of power given to the Judicial Branch

The anti-Federalists quickly became concerned about the power that was given to the judicial branch of the national government. The judges were to be appointed for life and could only be removed on conviction of treason, bribery, and high crimes and misdemeanors. Their pay could never be lowered, and they were not subject to any other branch of government if they were to rule erroneously or to interpret the Constitution incorrectly. The anti-Federalists saw great danger in this concentration of power into the hands of judges appointed to serve for the remainder of their life. Some anti-Federalists, one of which signed his name as “Brutus,” argued that under this system the judiciary would be inclined to expand the role of the national government and to diminish the role of states. Such a process would be impossible to stop, Brutus argued, because the Constitution provided no real check over the power of the federal courts.

a. Example:

- i. The Supreme Court of the United States will hear cases on the constitutionality of a law passed by Congress and signed by the President. This means that the Supreme Court will decide if the law follows the restrictions placed on the government in the Constitution. If it does follow the Constitution, the Court will uphold the law. If it does not follow the Constitution, the Court will declare the law unconstitutional and the law will have no effect in America.
- ii. To name a few examples of the power of the Supreme Court, it is the Supreme Court that has stopped the practice of prayer in public school, told states they have to allow abortions, and upheld orders to remove depictions of the 10 commandments from courthouses.
- iii. Under the Constitution as it has been interpreted by the Supreme Court, there is only one way to tell the Supreme Court that it did something wrong, and that is to pass a constitutional amendment. Constitutional amendments, however, are extremely hard to pass, and the Supreme Court has only been corrected or overturned by amendment four times.
- iv. Since 1789, over 10,000 amendments have been submitted to Congress, only 33 of those have been approved by Congress, and only 27 of those were ratified by the states. Another way to look at those numbers is to say that history shows the Supreme Court has less than a .27% chance of an amendment passing Congress and the states that is introduced to overturn or correct a decision by the Court.

- b. Thoughts:
- i. Were the anti-Federalists right about the power of the Supreme Court?
 - ii. Is the Constitution defined solely by what the Supreme Court says about the Constitution, or are there other powers that operate to define the Constitution?
 - iii. Who is more powerful or more dangerous - the Supreme Court or the President?
 - iv. What should be done if the Supreme Court interprets the Constitution incorrectly? Is there anything that an average citizen can do?

7. Article 1 of the Constitution

I. Article 1 establishes and defines Congress

The Constitution begins in Article 1 by establishing Congress. The United States Congress took its final form as a result of the “Great Compromise” that took place in the Constitutional Convention when the smaller and larger states could not agree on the manner of representation in Congress. The larger states wanted representation to be based on population (as they would get more representatives in Congress that way), and the smaller states wanted representation to be equal for each state (which would enable the small states to have an equal voice with the larger states). As a result of this debate, one portion of Congress – the House of Representatives – is elected based on the population, while each state gets to have two Senators serve in the Senate. Article 1 also specifies the basic process for making law, and it specifies that a law has to pass both houses of Congress before it can be sent to the President.

a. Example:

- i. Utah now has four representatives in the House, and, like all other states, it has two Senators. Prior to the 2010 census Utah only had three representatives in the House, but because of population growth it has been given a fourth representative. By comparison, California has 53 representatives, Texas has 36, and New York has 27 for the 2012 election.

b. Thoughts:

- i. Because the two Senators were supposed to represent the states’ interests in Congress, Article 1 specified that the state legislature was to choose each Senator. The Seventeenth Amendment, passed in 1913, changed Article 1 to make it so that the people elected the Senators, just like they elected the members of the House of Representatives. Now that the Seventeenth Amendment exists and all representatives are chosen by the people, is the “Great Compromise” of no effect?
- ii. Because people now choose the members of both houses, is there currently any real difference between the House of Representatives and the Senate besides the number of members of each house?
- iii. After the Seventeenth Amendment, is a two house system of Congress still a useful system? What types of checks and balances did it provide before the Seventeenth Amendment? What types of checks and balances does it provide now?

II. Article 1 Section 8 sets forth the powers of Congress

The Founders were worried about Congress trying to take too much power by passing laws in areas that it did not need to be concerned with. In an attempt to limit the powers of Congress, Article 1 Section 8 provides the specific powers given to Congress. In other words, if the power is not listed, Congress is not constitutionally authorized to pass laws in that area. Still fearing that this list of powers was not a clear enough limit on

the powers of Congress, the Tenth Amendment was added to clarify that all powers not listed are left to the states or to the people.

a. Examples:

- i. Some of the powers given to Congress are to:
 1. Impose and collect taxes
 2. Borrow money
 3. Regulate commerce between the states
 4. Coin money
 5. Establish a post office
 6. Declare war
 7. Punish Piracies
- ii. A large bulk of the laws passed by Congress are claimed to be under the power given to regulate commerce between the states. This power was supposed to allow Congress the ability to regulate goods as they were shipped between the states, but Congress has used this grant of power to try and regulate nearly every aspect of business in America.

b. Thoughts:

- i. What types of things are appropriate for Congress to regulate?
- ii. What is the purpose of having a Congress to pass the laws?
- iii. Is it better to restrict Congress to a few specific items, or should Congress be enabled to pass any legislation that it finds necessary?

8. Article 2 of the Constitution

I. Article 2 establishes the executive branch

Article 2 of the Constitution next establishes the executive branch. The Constitution places the executive powers of government in the President of the United States. The President serves as a check on Congress because the President can veto bills passed by Congress. This article also created the office of Vice-President. One unique aspect of the role of the President is that the President is placed as Commander in Chief of the military. This means that someone without any knowledge of war can be elected to be the head of the military and have the final say in complex decisions of war. Some people feel that this power was given to the President due to people's conception of George Washington and their thinking that all Presidents would be like him. The President also appoints federal judges and heads of other departments and agencies. Currently, each President will have to try and fill over 6,000 appointed positions. Most of these appointments have to be approved by the Senate however, and so oftentimes the President's top choices are rejected.

a. Example:

- i. Some positions sit vacant for the duration of the President's term because the Senate refuses to approve any of the President's choice for the position. This especially tends to happen when the majority in the Senate and the President are from different political parties. Positions also sit vacant simply because the President does not have the time to fill all of the positions.

b. Thoughts:

- i. How would you try to find 6,000 people to fill important positions in the government? How long would it take you to review each individual's qualifications? If you could manage to review the qualifications of and choose 10 people a day, it would take you 600 days (about 1 year and 8 months) of straight work to fill all of those positions.
 1. Is there a better way for these positions to be filled? Should we be able to elect others to these positions?
- ii. Who is best fit to serve as Commander in Chief of the military? Should someone with extensive military experience be the commander, is there another type of person that would be best suited, or is it best to leave the Commander in Chief position to the President?
- iii. What benefits come as a result of the President being the Commander in Chief? What are the drawbacks?

II. The Constitution established the electoral college to choose each President

As the office of President was a matter of great debate, the delegates to the Constitutional Convention spent a lot of time debating about how the President would be chosen. A direct election by the people was not favored, but neither was the method of

allowing the states to select the President. The delegates finally settled on a system, now called the electoral college, as a way to try and insulate the President from being directly controlled by the will of the people. Basically, the states got to choose how electors were selected, and once selected, the electors cast a vote for President. Each state gets an electoral vote based on its population. Currently, all states allow their citizens to vote for President, and the chosen electors then cast their votes in accordance with the vote in the state. The electoral college has produced a few unique results in various elections, but it is still in use today.

a. Example:

- i. In the year 2000, the election for President came down to a handful of votes to see who Florida's electoral votes would go to. Eventually, the electoral votes went to George Bush and he became the President. However, more people across the nation as a whole had actually voted for Al Gore. That meant that more people supported Gore than Bush, but Bush had managed to win certain states that had more electoral votes per capita. Because of the electoral system, Bush was able to win the election even though he received less total votes than Gore.
- ii. There is no national election system. When voting for President, each county in each state handles the election and certifies its results to the states. Each county gets to choose its manner of voting, whether it be electronic, by hand, or submitted by mail. The President is also the only office that appears on the ballot in every county across the country. All other federal representatives only appear on the ballot in the state or district that they are seeking to represent.

b. Thoughts:

- i. With the way politics functions today, is it necessary to have an electoral college? What useful functions does the electoral college still serve?
- ii. Why would the Founders be concerned about the President being directly elected by the people? Should the executive powers be used only to enforce laws that are popular, or should the executive enforce all of the laws passed by Congress? Should decisions about war and national security be made based on what the people want, or should those decisions be able to be made without worrying about whether the people approve of the decisions?

9. Article 3 of the Constitution

I. Article 3 establishes the judiciary

Under the Articles of Confederation there was no federal judiciary. A judiciary is important to help establish uniformity to the laws and to provide a final say on the interpretation of the law. The Constitution established only the Supreme Court of the United States, but it allowed Congress to create lower courts. In creating a federal court system, the Founders also disputed the manner of selection and retention of federal judges, and their choice is still debated today. The Constitution establishes that federal judges are appointed for their life unless they are impeached and removed from office for certain bad conduct. Additionally, the wages of the judges cannot be lowered while they are in office. This was done to allow the judges to interpret the Constitution and other laws according to what they believed was right. Since the judges cannot be removed from office or have their pay lowered, they do not have to fear making decisions that may go against the popular mood of the people at the time. The Founders felt that this was important to enable the Constitution to survive changes in public opinion and sentiments, and they hoped it would contribute to the longevity and solidity of the Constitution.

a. Example:

- i. Imagine that your school selected one student to act as a judge of other students' conduct. If a student violated the rules, cheated, damaged others' property, etc., the student who was judge would get to decide the punishment for the rule-breaking student. If this student were selected according to the method specified in the Constitution, the student would serve as judge for his or her entire life and could only be removed if he or she broke certain important rules.
- ii. Many states create terms for their judges and require the judges to be reviewed every certain number of years. Some states allow for judges to be elected, and others appoint the judges but let the people vote whether to keep the judges or not. In this system, judges know that if they displease the people enough they will lose their job.

b. Thoughts:

- i. If you were selected as the judge at your school, would knowing that you were to be judge for your life make it so that you made better or worse decisions?
- ii. Would you be tempted to be nicer to your friends or those you liked and harsher to those you did not like?
- iii. What effect, if any, would worrying about what others thought have on your ability to make good decisions? Should judges be elected by the people, be subject to a retention vote, or be allowed to serve for life?

II. What the courts look like today

Today, Congress has created three main levels of courts. The first level consists of District Courts, and most cases originate in these courts. There is usually one judge that presides over these cases. The second level is smaller and consists of Appellate, or Circuit, Courts, and the judges in these courts hear appeals from decisions made by District Court judges. Usually, three judges sit on each appeal, and the decision of a majority of the judges decides the case. The third level is the court established by the Constitution – the Supreme Court. There are thousands of appeals to the Supreme Court each year, but the Supreme Court only selects a handful of these appeals to consider. There are nine justices on the Supreme Court that listen to each case. Due to the size of the country and the number of cases that take place in the courts, there is a very small chance that any one case will ever make it to the Supreme Court for consideration.

a. Example:

- i. In 1989, an oil tanker named the Exxon Valdez ran aground and spilled oil throughout the Prince William Sound by Alaska. The Sound was a location for salmon, sea otters, seals, and sea birds, and was also a location where thousands of fishermen made a living. The oil spill destroyed thousands of miles of animal habitat and also destroyed the ability of these fishermen to earn a living. The fishermen brought a lawsuit in a District Court and watched it slowly make its way through the court system. Over 13 years after filing the lawsuit, the Supreme Court issued an opinion setting the final amount of money to be awarded in the case. During this 13 year wait the fishermen alleged that over 20% of those who were harmed by the oil spill and that were entitled to receive money to compensate for their harm had died.

b. Thoughts:

- i. Did the Founders ever envision a lawsuit taking over 13 years to obtain a final resolution? Today, lawsuits are very time consuming and often last for years. How do you think the Founders would address such a situation?
- ii. If the courts are supposed to act as a check on the executive and legislative branch, but it takes years for a court to decide if a law is constitutional or not, then are the courts really fulfilling their purpose? Lawsuits can take long enough that a new President may be in office by the time a court decides if what the last President did was constitutional.
- iii. Another way to consider the length that lawsuits take is that an unconstitutional law can remain in force during the entire proceedings of a lawsuit. That means that citizens can be sent to jail for violating that law prior to the time that a court declares it to be unconstitutional. If a successful constitutional challenge takes 5 years to work its way through the courts, then citizens have to spend 5 years living with certain constitutional rights denied to them. Should constitutional challenges be treated the same as other lawsuits, or should they be treated differently in a more expedited fashion? What should a court do for citizens that were placed in jail for violating an unconstitutional law and later let out?

10. Article 4 of the Constitution

I. Article 4 guarantees a Republican form of government to the States

While Article 4 is not very long, it reflects a very important principle in the system of government established by the Constitution. Since the Constitution was designed to set up and restrict the power of the federal government, it did not expressly mention the states too much. However, state governments were considered a very important part of the government established by the Constitution, and Article 4 reflects how the Founders wanted states to be able to have the freedom necessary to govern inside their borders. Besides a few restrictions on powers of the states expressed in Article 1 Section 10, the Constitution left the states alone. Article 4 expresses the restriction on the power of the federal government to interfere with the republican form of government of the states.

a. Example:

- i. To clarify that the silence in the Constitution about states meant that states retained their rights to self-government, the Tenth amendment was added to ensure that the Constitution was understood correctly.
- ii. Prior to the passage of the Fourteenth Amendment in 1868, the Bill of Rights did not affect or apply to the states in anyway. That meant that while Congress had to protect the rights contained in the Bill of Rights, the states were free to choose whether to respect those rights in each state. Thus, as an example, some states established state sponsored religions and some did not follow the grand jury method of indictment specified in the Fifth Amendment.

b. Thoughts:

- i. Why was the protection of the rights of states to govern themselves considered so important to the Founders?
- ii. Is it good or bad that the Fourteenth Amendment made most of the Bill of Rights apply to the states? Why would the Founders have made the Bill of Rights only originally apply to the federal government?

II. The admitting of new states

Article 4 also specifies that the Founders envisioned new states entering the United States of America. Since the founding of this country, 37 states have been admitted into the United States. As the country progressively moved westward, the states seemed to get larger, which likely was to enable the state to meet a requirement of a minimum level of population.

a. Examples:

- i. The United States would be a very small nation if it had remained limited to the original 13 states that existed at the time of its founding.

- ii. Hawaii was the last state to be admitted to the United States in 1959. New states can still be admitted, and the U.S. territories of Puerto Rico and Guam are often spoken of as possible candidates for statehood.
- iii. While Congress has the power to admit new states, it cannot split a state in half to create two states unless the legislature of the state agrees to the split. Thus, Congress cannot threaten to change the states or their boundaries to make the states comply with Congress's desires.

b. Thoughts:

- i. Are there any reasons for or against admitting more states to the United States?
- ii. How far around the world should the United States consider allowing others to join as a state? Alaska and Hawaii both do not physically connect to the United States. Are there any problems that arise from having states located far away from the main body of states? Should the United States ever admit a state in Asia, Europe, or Africa? Why or why not?

11. How Articles 1-4 Created a More Perfect Union

I. The new government was designed to protect against oppression

Every system of government that the Founders had studied resulted in the people under those governments experiencing oppression because of the inability of individuals to rule justly when in positions of power. The Founders recognized the great threat that creating a national government posed if one person or group was able to wield all of the power. In order to create some protection against this new government turning into an oppressive government, the Founders took great care to create a system of “checks and balances” to ensure that each branch of the government operated to keep the others in line with their duties.

a. Example:

- i. The Constitution requires Congress, the legislative branch, to submit all laws to the President, or the executive branch, to be signed into law. The President can act as a check on the legislative branch by vetoing the legislation.
- ii. The legislative branch can act as a check on the President by not appropriating the funds necessary for the President to carry out his duties. Additionally, while the President acts as Commander in Chief of the military, Congress has to be the one to declare war and to appropriate and approve the money for the war.
- iii. The President selects the judges to serve in the judiciary, but the judiciary has the final say on what laws or actions are in accordance with the Constitution. If either the President or Congress oversteps their constitutional authority, the courts can declare those laws or actions invalid.

b. Thoughts:

- i. Why is it important to recognize the influence of power on people that serve in the government?
- ii. If the Founders were so concerned about the government being oppressive, why did they want to set a government up? What are the benefits to having a government?
- iii. What values can a person develop that will help them not use positions of power to oppress others? Is there anyway to pass these values on to others?

II. The role of the states in limiting the power of the federal government

While the 3 branches of the federal government, the executive, legislative, and judicial, all operate to keep each other in check, the states play a very important role as well in keeping power out of the hands of the federal government. One major way the Founders sought to keep a large amount of power from all 3 of the branches in the federal government was to keep a lot of the power with the states. Creating a system where state

and local governments had specific powers that were not given to the federal government was the surest check that the Founders could implement to prevent the accumulation of power within the hands of a few. The Founders understood that each state would not do things all the same and that some states would do a better job than others. However, they recognized how essential the states' roles are in preserving freedom and preventing oppression. Thus, while the 3 branches in the federal government serve to keep each other in check, the states serve the important purpose of keeping these 3 branches from taking more power from the people.

a. Example:

- i. Healthcare is currently a controversial topic, especially after the federal government passed a major healthcare law. This law took effect in 2014, but many states joined in a lawsuit against the federal government to challenge the law. The states feel that the federal government is trying to take power that belongs to the states. Since Congress only has the authority granted to it by the Constitution, and since the Constitution does not mention healthcare, the states argue that the Founders left matters such as healthcare to the states.
- ii. Most police that you are familiar with are acting for the state or city that you live in and they are not acting for the federal government. The states have authority to enforce many laws to help keep their citizens safe. Things such as murder, theft, car registration, driver licenses, and sales taxes are all examples of things that states have authority over. When you travel from state to state, the speed limit will usually change based on how that particular state feels about certain speeds and safety. If the federal government made all laws, they would typically be the same across the entire country and would not change in each state.

b. Thoughts:

- i. When the federal government does not have the constitutional authority to control something left to the states, such as education, the federal government will often offer large amounts of money to the states if the states will agree to do what the federal government wants them to do. In this way the federal government is essentially buying the authority to control certain things from the states. Is this method in line with the Constitution, or has the government found a way around the checks and balances established by the Constitution?
- ii. In the federal/state system of checks and balances (commonly referred to as federalism), does it matter that some states are smaller or larger than others? California's economy is part of the 10 largest economies in the world, so if California were its own country it would be part of the wealthiest nations in the world.
- iii. Does the size of the state give it more or less political power? Would it help things if states were rearranged to be even in size and population?

12. Articles 5-7 of the Constitution

I. Article 5 sets forth the amendment process

The Founding Fathers knew it was unlikely that the Constitution included everything it needed to, especially since they planned on the Constitution serving America for many years to come. To make sure that the Constitution would be able to address future situations, they set forth a method of amending the Constitution. However, they did not want the Constitution to be amended following swings in public opinion as public opinion can change rather rapidly. Rather, they wanted to make sure that any amendment was the result of real need and was made with calm feelings after things had been appropriately thought through. To ensure that this was the case, they made the amendment process difficult, but not so difficult that an amendment would never be able to take place.

a. Example:

i. The Constitution provides two ways to go about amending the Constitution. The first method allows two-thirds ($2/3$) of both Houses of Congress to approve an amendment. Once this approval takes place, the amendment is sent to the states and three-fourths ($3/4$) of the states have to approve of the amendment. Approval is effective in the states if approved by the state legislature or by a convention called in that state. The second method is to allow two-thirds of the states to call a national convention to propose amendments. This method bypasses Congress having any say in the amendment process, but it still requires three-fourths of the states to agree to the amendment after the national convention. The second method has never been used yet but states have tried to call one on a number of occasions.

b. Thoughts:

- i. Is the biggest obstacle to amending the Constitution Congress or the states? Out of over 10,000 amendments submitted to Congress, only 33 have been passed on to the states. Out of those 33 submitted to the states, the states have rejected only 6 of them.
- ii. Is amending the Constitution a good idea? What types of issues should be included in an amendment to the Constitution, and what issues should be left to be included in everyday laws?

II. Article 6 makes the Constitution the supreme law of the land

As it was important to set forth the relation of the Constitution to that of the states, Article 6 of the Constitution expresses that the Constitution is the supreme law of the land. For the states at the time, that meant they were giving up some of their authority to the new, higher federal government that was created with the Constitution. It also means that every law that is passed and every state constitution that is created must be in line with the principles expressed in the U.S. Constitution.

- a. Example:
 - i. A lot of cases that arise in the court system involve issues of whether a law conflicts with the principles set forth in the Constitution. If a law is found in conflict with the Constitution, it cannot be enforced. This is because the Constitution is supreme, and so no law can be enforced that is found to be in conflict with the Constitution.
- b. Thoughts:
 - i. Lawsuits are very costly and involve a lot of dedication and time. A typical lawsuit to challenge the constitutionality of a given law will often cost well over \$100,000 in attorney fees alone. Are lawsuits a good way to keep laws in check with the Constitution? Are there any better methods that could be used?

III. Article 7 sets forth the method of making the Constitution operable

The Constitution ends by stating the number of states required to support the Constitution for it to go into effect. Nine of the thirteen states were required to ratify the Constitution in order for it to operate as the supreme law of the land. If only eight states would have ratified the Constitution, the United States would not be operating under the Constitution and likely would have had a different form of government.

- a. Example:
 - i. Team sports require a certain number of players per team in order to play the sport as it was designed. Sometimes, when people play pick-up games, they cannot find enough team members to participate that day. Without enough team members, people can either play an altered version of the game (such as half-court basketball), or not play at all.
- b. Thoughts:
 - i. Would 9 states have been enough of a team to make the Constitution work as it was supposed to? Why do you think that the Founders required only 9 states to ratify the Constitution in order for it to be put into effect?

13. The Need for a Bill of Rights

I. A Bill of Rights protects individuals

Most of the debates at the Constitutional Convention centered around protecting the power of the states and keeping the federal government limited to the few powers given to it in the Constitution. At the time of the convention, the states had their own state constitutions that protected most of the rights now listed in the current Bill of Rights. Although a few delegates to the convention raised the issue of individual rights, little attention was paid to these issues because the convention largely focused on the matters of state versus federal power.

However, once the Constitution was circulated to the people in each state, it became very obvious to the Founders that the people, and the states, were very concerned with protecting the rights of the individual. The largest amount of opposition to the Constitution came because the Constitution lacked any list of individual rights. The people were well aware, from their own experiences under the British and from the experiences of others in history, that a government will inevitably reach its hands into the daily lives of its citizens unless the citizens have a way to preserve their rights against the slow and steady march of the spread of government power. Thus, in order for the Constitution to become complete, it needed to include a Bill of Rights to protect people at an individual level. The first ten amendments to the Constitution have been termed the Bill of Rights.

a. Example:

- i. The Constitution contains seven articles. Each article establishes the relationships between the three branches of the federal government and the states, as well as establishing a few provisions concerning amendments, debts, and ratification. Besides a few items mentioned in Article 1 Section 9 (such as the privilege of the Writ of Habeas Corpus and a prohibition against ex post facto laws), no article in the Constitution discusses the relationship of the government to the people.

b. Thoughts:

- i. While the seven articles to the Constitution do not discuss in detail the limits on the government's power over the people, the preamble to the Constitution states that:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

If the "People of the United States, in Order to ... secure the Blessings of Liberty to ourselves and our Posterity" were establishing the Constitution as the preamble states, then did the seven Articles in the Constitution

sufficiently protect the rights necessary to maintaining freedom and liberty in the land?

- ii. Is including rights in a Constitution the only way to protect those rights?
- iii. The Founders originally believed that the government would never have the power to do anything not listed in the Constitution. Thus, they believed, it was unnecessary to list every right because the government could not exercise any power not listed. In other words, they saw the absence of a list of rights as being what protected those rights. While many Founders changed their view, what are the merits of their original view, the view that silence means protection? Could this view work in our world? If so, what types of characteristics would the leaders of this country need to have to use only the powers that are expressly listed?

II. A Bill of Rights provides a final check to prevent oppression

While the system of checks and balances established by the Constitution helped to stop the accumulation of power into the hands of a few people, the original Constitution contained no remedy for oppressive laws that made it through the system of government as created. The Bill of Rights served to place the final check on the government in the hands of the people by guaranteeing certain rights to the people that the government could not infringe. Accordingly, even if an unjust law managed to make it through the legislative process and become law, with a Bill of Rights in place the people could fight back to have the law declared unconstitutional. The Bill of Rights, then, gave the people the final check on the powers of the government by specifying certain areas that were to be left untouched by the government.

a. Example:

- i. One great check given to the people is found in one of the first rights listed in the Bill of Rights – the freedom of speech. Since the government leaders in the United States are elected, for the most part, by the people, the power to speak and criticize government officials for their failure to follow the Constitution is a powerful force to help keep the leaders in line. Absent the right to speak, the government could silence the people and there would be no final check against the spread of oppressive laws.

b. Thoughts:

- i. Besides the right to speak, what other freedoms or rights give citizens the power to play a role in providing a check on the government?
- ii. Besides voting for government officials and exercising rights included in the Bill of Rights, are there other things citizens can do to preserve freedom and prevent the passage or enforcement of oppressive laws?

14. The First Amendment

I. The First Amendment protects five basic rights of the individual

The First Amendment states:

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.

Most of the people who voluntarily came to America when it was discovered came to have freedom to live their choice of religion. Once in America, the British government continued to oppress the colonists by violating their freedom of speech, of the press, and of the people to assemble, and the colonists had no real way to petition the British government when they were suffering under oppressive and unjust laws. Thus, the First Amendment came about as a direct response to the past and what the colonists had suffered. The First Amendment was created to protect the people by protecting the freedom of religion, the freedom of speech, the freedom of the press, the right of the people to assemble, and the right to petition government officials for relief from oppressive laws.

a. Example:

- i. **The Freedom of Religion** - The First Amendment protects two aspects dealing with religion. First, it states that Congress cannot make a “law respecting an establishment of religion,” or Congress cannot create a government sponsored religion. The practice at the time was for national governments to establish a set religion as the country’s religion, but the Founders refused to allow the Federal Government to cause that to happen in America. Second, the First Amendment states that Congress cannot prohibit the free exercise of religion. Thus, the government was not supposed to make one church the official church of America, nor was it supposed to interfere in anyway with the freedom of the people to select and follow a particular religious denomination.

b. Thoughts:

- i. How does the freedom of religion affect a country? Are there positive benefits it provides? Are there negative aspects to the freedom of religion?
- ii. A phrase commonly used to describe why religion is not allowed to be taught or practiced in government schools is that the First Amendment requires “a separation of church and state.” Is this a true statement? Is this phrase being used to deny the freedom of religion of those who wish to pray in government schools? Or does it accurately describe the purpose of the First Amendment?

c. Example:

- i. **The Freedom of Speech** - Many of the brave people who were willing to declare their independence from England could have been placed in jail or killed for speaking out against the British government. In America, the Founders intended to allow all people the right to speak their minds without fear of government officials harassing or penalizing them for their words. Because of this protection, people can burn flags, criticize the government, and otherwise speak their mind without being placed in jail.

d. Thoughts:

- i. Oftentimes people do not enjoy listening to or hearing what others want to say. Many people find others' viewpoints offensive. Should there be limits on what people can say, or should the freedom to speak remain open like the Founders intended?
- ii. The internet is considered to be an area where people can speak their minds and say what they please. The internet is full of good and bad things. Some people want to be able to limit the amount of bad things that can be placed on the internet. Would our world be a better place if the internet remained completely free, or would it be better if the government could regulate the good and bad on the internet?

e. Example:

- i. **The Freedom of the Press** - The Founders knew that another important check on the government, and on government officials, was to have a free and robust press. This was so because a free press would investigate and expose corruption in government and would help the people have the appropriate information to make the government officials accountable for their actions.

f. Thoughts:

- i. Many constitutional scholars do not agree on the meaning of the freedom of the press. Some say that the freedom means the government cannot control the content of the news, but others say that the freedom of speech already stops the government from controlling the content of the news, and so the freedom of the press must mean that the government is not able to control the actual machines that are involved in preparing and distributing the news. Which argument more accurately reflects the Founders' view?
- ii. Another problem that is often debated is who qualifies as "the press"? Everyone would likely agree that a newspaper publisher qualifies, but what about one person who creates flyers to distribute once to others? What about a blogger on the internet, or someone who uses ads on TV to spread what they consider to be news? The electronic age seems to be radically transforming the way that Americans send and receive news, and it may also be transforming the definition of "the press."

g. Example:

- i. **The Freedoms to Assemble and Petition the Government** - The final freedoms protected by the First Amendment involve the right of people to peaceably assemble and to seek redress for wrongs. As one person's voice is often too small to be heard or noticed, the right of people to assemble is critical to allow likeminded people the opportunity to create a group large enough to be noticed and heard. It also gives people the right to make sure that they can at least have their voice heard when seeking help from the government.

h. Thoughts:

- i. What types of assemblies of people take place in this country?
- ii. What types of ways have been created to allow people the opportunity to seek help from the government?
- iii. Why are these two freedoms essential to maintaining a free country?

15. The Second, Third, Ninth and Tenth Amendments

I. The Second and Third Amendments protect gun ownership and protect against certain abuses by the military

The Second Amendment protects the right of the people to bear arms, or to own a gun. The Third Amendment protects citizens against the quartering of soldiers in their homes, or, in other words, it means that the government cannot require citizens to let soldiers into their home to eat and sleep.

a. Example:

- i. Both of these amendments have received relatively little attention in the courts until recently. The Second Amendment was brought into the spotlight when a ban on handguns in Washington, D.C. was challenged as violating the Second Amendment right to own a gun. The Supreme Court declared the handgun ban to be unconstitutional because it violated the Second Amendment guarantee, and since that time a number of other cases have been filed to challenge gun regulations in other cities and states.
- ii. The Third Amendment has been classified as one of the least referred to amendments. The British required the colonists to house and feed soldiers, and the colonists found this practice very repulsive and oppressive. The Third Amendment was meant to protect against this practice, but since American minds were so deeply ingrained with the injustice of this practice it has never really been attempted since the Constitution was ratified. It can be said that all branches of government have deeply respected the rights protected by the Third Amendment.

b. Thoughts:

- i. While the Second Amendment's guarantee of owning a gun has not received a lot of attention in the courts, it has been a continuing source of debate in America. Many want to ban guns in America, and they point to the numbers of murders and other crime that take place here to support their argument. Others that support the Second Amendment say that gun ownership actually helps us be safer from criminals and from the government because it gives us a way to defend ourselves.
- ii. How do you feel about guns? Would crime go down if guns were banned? Or would crime still occur, but with other weapons, such as knives?
- iii. In the colonists' time, guns were useful as a means of survival as many colonists had to hunt animals in order to survive. Gun ownership also made the Revolutionary War possible as it enabled the people to defend themselves against the oppressive British government. Do either of these factors still contribute to an argument for gun ownership today? Could shotguns, rifles, and handguns be used to stop the bombs, planes, and tanks of the U.S. military?

II. The Ninth and Tenth Amendments confirm that there are other rights not mentioned in the Bill of Rights that are equally important and are left to the states or to the people

A fear that persisted throughout the debate over including a Bill of Rights in the Constitution was that it would be impossible to list or recognize every right. If an important right was accidentally left off of the list, it was feared that the right would receive no protection. Because of this fear, the Ninth Amendment was created to set forth that the Bill of Rights is not a complete list of all rights, and that others left out of the list may be just as important.

The Tenth Amendment strengthens the Ninth Amendment by clarifying that the federal government cannot take any power that is not mentioned in the Constitution. In other words, if the right or power cannot be found in the Constitution, then the Tenth Amendment states that it is a power left to the states or to the people. Thus, if something was left out of the Constitution, the combination of these two amendments was intended to ensure that the federal government never had the ability to claim a power or take away a right that was not mentioned. This method of dealing with issues that may have been left out of the Constitution gives the benefit of any omissions to the people and not to the government.

a. Example:

- i. Suppose a school teacher hands out a homework assignment to study for a test. The assignment mentions three types of problems that will be on the test. When it comes time to test, however, the teacher includes problems that were not mentioned in the homework assignment. Because the students did not prepare for the extra problems on the test, most of them do poorly and do not get a passing grade.

b. Thoughts:

- i. Is it fair for a teacher to include items on a test if they never tell the students that those items will be on the test? If a teacher includes items on a test without fair warning, should the students get a bad grade or should the problems be thrown out?
- ii. Similarly, is it fair for the government to use something not listed in the Constitution to gain advantage over the people? What is the best way to deal with items that may have been accidentally left out of the Constitution, or that were not an issue when the Founders were alive? One example is with healthcare and another with marriage. Since healthcare and marriage are not mentioned in the Constitution, does the federal government lack power to regulate healthcare or to define marriage?

16. The Fourth and Fifth Amendments

I. The Fourth Amendment protects against unnecessary invasions into personal matters

The Fourth Amendment was designed to place a check on the executive powers by requiring a judge to issue a warrant before government officials, such as the police, can search an area, take property, or make an arrest. Since the government does have the power to investigate violations of the law and arrest criminals, the Founders wanted to ensure that this power was not abused. If the police were able to enter any home and arrest any person simply because they wanted to, then people would live in fear of what an angry police officer may do one day. Because police have to appear before a judge and describe enough facts justifying a search or arrest to produce “probable cause” to proceed with a search or arrest, this amendment helps to protect people from abuses by the police or other government officials.

a. Example:

- i. Sometimes it is hard to understand how this amendment protects citizens. In the past, innocent citizens’ homes would be searched for different reasons. Imagine waking up to the police banging on your door, entering your home on their own, handcuffing you and your family while they searched everything in your home, and then taking one or two of your family members to the police station for hours and hours of questioning without being provided with food or water. It is very upsetting to have the police deal with you and your family in such a manner, and if you have done nothing wrong it is even more upsetting. Thanks to the Fourth Amendment, most people can live with a feeling of security in their homes and can trust, rather than fear, the police.
- ii. This amendment is one of the most debated amendments in the courts. It has given rise to untold numbers of cases and has been interpreted by so many different judges that it is extremely difficult for a police officer to understand what conduct is permissible and what is not. The Supreme Court has also created a number of exceptions to the Fourth Amendment where the Court has stated that there are times when the protections of the Fourth Amendment do not apply. The Court has also applied the Fourth Amendment differently to businesses, people, vehicles and homes. The Court has done so to aid the ability of law enforcement to do their job, but many debate the wisdom of these exceptions, especially since the Fourth Amendment does not state that it should apply differently in different situations.
- iii. In 2014 and 2015, the media has highlighted many cases of police abuse and violence against various individuals. Most often, these cases result in the death of the individual.

b. Thoughts:

- i. If the Fourth Amendment really made it too hard for the police to do their job of catching criminals, what is the proper way to deal with that problem as a judge? Should a judge create an exception and say that the Fourth Amendment does not apply in certain situations, or should the judge apply the amendment as it stands and let the amendment process specified in Article 5 be used to fix the problem?
- ii. If a police officer violates the Fourth Amendment by searching your home without a warrant, what should happen? How can courts make the Fourth Amendment protections apply to the people if the police officers choose to disregard the Fourth Amendment?
- iii. Currently, the courts will not let the police use evidence they gathered in violation of the Fourth Amendment. That makes it so that some criminals are not convicted of the crime they committed because the evidence the police gathered is thrown out. Is this an appropriate way to apply the Fourth Amendment to the police? Is there anything else a court could do to make the Fourth Amendment apply?
- iv. What can be done to help citizens have protections against unduly violent police officers? What type of remedies should be in place for families who lose loved ones to police violence?

II. The Fifth Amendment helps protect against abuse of powers granted to the government

The Fifth Amendment provides a wide variety of protections. It requires the government to present its evidence to a grand jury before a person can be later tried for a crime and to gather all of the evidence and present it at one trial (rather than trying over and over again to convict a person of a crime). The amendment also protects a person by giving them the right to refuse to be a witness against himself or herself in a trial. The amendment then requires that every person be given due process under the law, and it ends by stating that the government cannot take private property for public use without providing just compensation. The amendment really packs a lot of protection into a few words.

a. Example:

- i. The Fifth Amendment includes a number of protections for those accused of a crime. While these protections are often seen as costing money or benefiting criminals, they were put in place to make our criminal system as just as possible and to keep innocent people out of the system.
- ii. The Fifth Amendment also serves to require due process of law. This means that the government must follow each of the laws before an individual can have their life, liberty, or property taken from them. Due process serves to ensure that the government respects its own laws and rules, and it serves to ensure that the justice system is working properly.
- iii. Finally, the Fifth Amendment requires the government to provide compensation when it decides to take over personal property so that the property can be put to public use. The common example of this is when

the government decides to create a new road. This amendment requires the government to purchase the land for the new road from the people that own it, rather than just taking the property from the owners. As long as the government pays justly for the property, there is little property owners can do to stop the government from taking their property. When new roads go in, people usually lose houses, farms, and other cherished pieces of property.

b. Thoughts:

- i. Why were so many protections lumped together into one amendment? Are the protections related, or do they not have anything to do with each other?
- ii. Are there any important rights involved in the criminal justice system or involved with the people's everyday dealings with the government that the Founders failed to address?
- iii. Is it fair for the government to be able to take your house to put in a road? To put in a park? To put in a shopping center? What limits should there be on the government's right to take your house from you? Should there be any additional protections besides payment for your property?

17. The Sixth, Seventh and Eighth Amendments

I. The Sixth Amendment requires fairness from arrest to the end of the trial

Once arrested or charged with a crime, the Sixth Amendment requires the government to inform the accused of the charges against him or her, to conduct a trial in a timely manner, to have a trial in front of a jury, to let the accused confront the witnesses against him or her, to call witnesses that would support the accused, and to provide a lawyer to help the accused if necessary. These provisions all support the fairness of the justice system in this country.

a. Example:

- i. The Sixth Amendment requires the government to provide these protections to the person accused of a crime. However, the person accused of a crime does not have to accept or exercise all of these rights. Often, a person accused of a crime will waive some or all of these rights, such as the right to a speedy trial. When this happens, a trial may take place years after the crime was committed.

b. Thoughts:

- i. The Fourth, Fifth and Sixth Amendments all focus on providing some fairness in the criminal justice system. It is clear that they have not made for a perfect justice system, yet the system has substantially improved over the systems used by past governments, largely due to the enforcement of these amendments. What improvements could still be made to the justice system? Are all of the rights given to people accused of crimes necessary to make a just and fair system?
- ii. Do these amendments give too much protection to those accused of a crime? What are some important considerations when evaluating the justice system?

II. The Seventh Amendment allows for jury trials in civil cases

While the Sixth Amendment made it clear that criminal trials were supposed to have a jury, some worried that “suits at common law” would somehow lose the right to have a jury. A “suit at common law” is a case in the civil context where two parties dispute over whether one owes the other money, what the terms of a contract between the two parties requires, etc. The Seventh Amendment required the option of a jury to be available in all of these suits at common law that involved over \$20. The Seventh Amendment also made it so that the conclusions of fact by a jury could not be reexamined or altered by a judge at a later date.

a. Example:

- i. Today, it would be extremely rare for a lawsuit to only involve \$20. Just the fee to file or begin a case in court costs more than \$20. In Utah in 2011, the cost to file a case in small claims court for amounts in dispute

that are under \$2,000 is \$60, with an average lawsuit costing \$600 to file. To file and request a jury for the trial adds \$250 to the cost of the case. Because nearly all lawsuits involve over \$20 today, nearly all lawsuits that fall under the classification of being a “suit at common law” will have the right to request a jury.

- ii. The jury is considered to be a check placed on the judiciary and on the other branches of government. A jury will usually consist of 6-12 average people without special experience in law or government. The jury will listen to the case and will decide the facts. In other words, the jury will usually determine who to believe and what events actually took place. This makes it so that judges do not have all power over a trial, and it allows citizens to choose not to enforce unjust laws. If the jury members perceive that the law, as applied to the parties in the case, is working a great injustice, they can choose to find a party not guilty or responsible under the unjust law. While it is uncommon for a jury to do so, the power for a jury to ignore the law does exist and is called jury nullification.

b. Thoughts:

- i. If you were sued for something that you did not do, would your chances at being believed be better with one judge or with 6-12 members of the community?
- ii. Today, some lawsuits are so complex that they take months to complete. Jury members have to sit through it all and must try to digest all of the information. At the end of the trial they must then return their findings. Some argue that the complexity of these cases makes it so that the jury system does not work well, as most people cannot understand half of what is being discussed at the trial. Should juries be used in complex trials?
- iii. What are the benefits and drawbacks to having members of the community participate on a jury in a trial? Is it fair to make someone take 3 months off of work to serve on a jury?

III. The Eighth Amendment protects against cruel treatment

The Eighth Amendment prohibits the government from imposing excessive bail and fines and from imposing “cruel and unusual punishments.” In essence, this amendment seeks to make the punishment imposed match the crime committed. In other words, if a person puts graffiti on a fence, this amendment would prohibit the government from fining that person millions of dollars.

a. Example:

- i. Today, the Eighth Amendment is most commonly used to argue against the death penalty. Many people want to see the death penalty done away with completely, and they argue that it is “cruel and unusual” to put somebody to death for a crime, even if that person murdered many others. The debate in the courts over whether the death penalty constitutes “cruel and unusual” punishment revolves around two different views of how the

Constitution should be interpreted. Those that support the death penalty say that it has been used since the Constitution was ratified, and since it has been in use since the creation of the Constitution, that use proves it does not violate the Eighth Amendment. Those that oppose the death penalty argue that societal standards of decency have changed which, in turn, makes it so that the definition of what is “cruel and unusual” has also changed. Thus, the debate is over whether a phrase in the Constitution should be interpreted as it was understood when created, or whether it should be interpreted based on how the phrase is understood today.

b. Thoughts:

- i. Leaving aside the issue of the death penalty, should the Constitution be interpreted based on how the Founders understood things or based on how things are seen today? Did the Founders want the Constitution to change with public opinion or standards of decency, or did they want it to be changed only by amendment?
- ii. Do you feel that the death penalty is cruel and unusual? Can criminals do things bad enough to “deserve” death, or is the death penalty a tradition that should be abandoned?

18. The Thirteenth, Fourteenth, Fifteenth and Nineteenth Amendments

I. The Thirteenth, Fourteenth, and Fifteenth amendments helped Blacks become free

The Thirteenth Amendment was passed in 1865 to abolish slavery. The Fourteenth amendment came about in 1868 to clarify the citizenship rights of those who were once slaves. This amendment also caused the states to be subject to most of the Bill of Rights (a big change from the original Constitution), which made it so that all people must be treated equally by the laws of all the states. The Fifteenth Amendment followed in 1870 to make it so that states could not deny people of color the right to vote.

a. Example:

- i. These three amendments represented a major step away from slavery and racism for America. The sad thing is that it took three amendments and several major Supreme Court cases to finally provide true freedom and equal treatment to all people regardless of color. The last Supreme Court case to finally bring states in line with equal treatment of all people was *Brown v. Board of Education* in 1954, where the Supreme Court declared it unconstitutional to require people of color to use separate facilities.
- ii. The Fourteenth Amendment has become one of the most used constitutional provisions in the courts today. The concept of equal treatment of all people has been applied to challenge a wide variety of laws, and the amendment is also used to make the states comply with the Bill of Rights. After so many cases on discrimination and equal treatment, the Supreme Court has basically decided that some types of discrimination are more acceptable than other types of discrimination. As an example, discrimination in a law on the basis of race or color almost always violates the Constitution, while discrimination on the basis of age rarely does.

b. Thoughts:

- i. Many people in America still suffer the effects of discrimination due to their skin color. It is obvious that America is still fighting to overcome the ills produced by slavery. Currently though, is the problem of racism due to a lack of good laws, or is it due to other factors?
- ii. What factors contribute to racism? What can you do to help end racism in America?

II. The Nineteenth Amendment helped women gain equality

Even with the passage of the Fourteenth amendment and with the end of slavery, women in America still found themselves lacking many of the legal rights given to men. In the eyes of many women, the most important right to gain was the right to vote. Some states, such as Utah, did give women the right to vote, but many states did not. In 1920, the Nineteenth Amendment was finally passed, and all states were required to give women the right to vote.

a. Example:

- i. Today it is hard to imagine what things must have been like before this amendment was passed. Can you imagine all of the women in the country not having a say in politics? While it is hard to imagine this situation existing, all of us are currently benefitting from the hard work of many dedicated individuals. It took great sacrifice and effort to enable people of color and women to be treated the same as those who dominated society at the time.

b. Thoughts:

- i. Today, many causes still exist that people expend great efforts to support. What are issues that exist now that you would like to have resolved so that future generations could enjoy the blessings of your efforts? Have you ever thought how long lasting and widespread your efforts can be in changing the bad aspects of society?
- ii. Can the claim to equal treatment be taken too far? Taken to its extreme, “equality” would require that we all be the same, think the same, and act the same. Is it good to recognize that we have differences and that laws can be made based on those differences (such as allowing men and women restrooms), or should laws not be allowed to recognize differences at any level?
- iii. If some differences are ok to for the law to focus on in a society (different restrooms for men and women, laws banning employment for children, laws establishing a minimum drinking age, etc.), what principles should be used to establish permissible differences versus impermissible differences?
 1. The Supreme Court has established certain “protected classes” and held that discrimination based on a protected class is illegal without a compelling reason for that law. Race, or skin color, is a protected class. Thus, laws cannot allow for Black and White restrooms. What classifications should be used to establish a “protected class”? Is there a better way to establish whether laws are acceptable or not?

19. Amendments Addressing Matters of the President and Congress **(12, 17, 20, 22, 23, 25, 27)**

I. The Founders did not foresee every issue

The Founders were very aware that they did not foresee every issue that might arise under the new system. Because of this, the Founders established a way to amend the Constitution to correct any problems that would inevitably arise. During the presidential election when Thomas Jefferson was elected as President, it became clear that the method of voting for President as specified in the Constitution was inadequate. The specified method did not account for situations where the President and Vice-President ran together as a pair. The Constitution envisioned having candidates running only for the President position, and the candidate with the most votes would become President while the candidate with the second most votes would become Vice-President. To remedy this situation and allow a President to choose his Vice-President, the country added the Twelfth Amendment to the Constitution in 1804.

a. Example:

- i. Other situations took longer to address than the Vice-President issue, likely because it also took longer for the problem to present itself. The Twentieth Amendment was ratified in 1933, and it addressed matters of terms of office as well as presidential succession in case of the President's death prior to being sworn into office. The Twenty-Second amendment came about in 1951, and it set the limit of terms a person could be President at 2 terms. This came about after Franklin D. Roosevelt died during his fourth term as President.
- ii. More changes came about as the situations arose. After some time, those in Washington, D.C. felt it was unfair to not have a say in choosing the President. The Twenty-Third Amendment came about in 1961 and addressed this situation by giving a vote for President to those in Washington, D.C. The Twenty-Fifth Amendment was ratified in 1967 and finally dealt squarely with the issue of the situation arising where a President is disabled, dies, or otherwise leaves office.

b. Thoughts:

- i. It is interesting to note how many amendments have dealt with the President. The Founders debated the position of the President and Vice-President extensively. Yet, these positions, and the methods chosen to select the people for these positions, involved new ideas that had not been widely used. Therefore, it would have been hard to think through each of the possible scenarios that would arise. How well do you think you could do in creating a new form of government?
- ii. Did the Founders ever envision America becoming as large as it is today? Did they ever envision 50 states working together relatively well under the constitutional framework they established? It is quite remarkable to think that a handful of men established the system of government that still governs such a large country today.

II. Other changes affected matters addressed by the Founders

In addition to amending the Constitution to correct matters not addressed by the Founders, America has also amended the Constitution to change principles that were considered and agreed upon by the Founders and the thirteen states. The Seventeenth Amendment presented one of the most major changes to a principle agreed upon at the Constitutional Convention. Due to the serious debates at the Constitutional Convention over the representation of the states, the delegates to the convention agreed that the Senate would consist of 2 representatives per state while the House would have representatives based on each state's population. The Senators were also to be chosen by the states to help represent the will of the states, while the House would be chosen by the people to represent the will of the people. The Seventeenth Amendment changed this by making the Senators directly elected by the people. With the Senators being directly elected by the people, many argue that the Senators are equivalent to the representatives in the House because they will now represent the will of the people rather than the states. Others disagree and say that although the people elect the Senators, they still represent the will of the states. Either way, the Seventeenth Amendment clearly rejected one of the main principles discussed and agreed to by the Founders.

a. Example:

- i. The Twenty-Seventh Amendment also changed a principle expressly considered by the first Congress and the states. This amendment made it so that a pay increase to Congress could not take effect until after the next election, thus ensuring that if the pay raise made the people disgruntled, those that supported the raise could be removed from office before they benefitted from the extra money. This amendment was the original second amendment presented to the first Congress and passed along to the states. At that time, not enough states ratified the amendment though. It took until 1992 for enough states to ratify the amendment. In other words, after the first Congress approved the amendment, it took 74,003 days for enough states to ratify the amendment.

b. Thoughts:

- i. Are the Seventeenth and Twenty-Seventh Amendments improvements to the Constitution? If so, in what ways do they help to improve things?
- ii. Are there other principles expressed in the Constitution that should be changed? What are those principles?
- iii. Are there any protections that should be added to the Constitution? Does the Constitution adequately address issues related to the internet, technology, privacy, etc.?

20. The Remaining Amendments (11, 16, 18, 21, 24, 26)

I. These amendments reflect a variety of different thoughts

The remaining amendments to the Constitution represent various ways America has tried to deal with issues it faced at different times. Some of these amendments came about in response to Supreme Court decisions, others were to try and improve the morality of the country, while others sought to help people vote by banning poll taxes and lowering the voting age to the same age of men who were drafted to fight in war.

a. Example:

- i. The state of Georgia was sued in federal court shortly after the United States was created. The Supreme Court ruled that this was constitutionally permissible, but that did not resonate well with the states and the people. The Eleventh Amendment was passed to overrule the Supreme Court and clarify the meaning of the Constitution. It represents one of the four times that the Supreme Court was overturned by an amendment.
- ii. The Sixteenth Amendment also is a time when a decision by the Supreme Court was rejected by the states and the people. When the federal government tried to collect taxes based on income in the 1890's, the Supreme Court rejected the tax because it decided it went against the Constitution. The Sixteenth Amendment was ratified a number of years later to allow the federal government to collect income taxes.

b. Thoughts:

- i. Should the amendment process be the only way to correct the Supreme Court? What other methods could have been included in the Constitution as a check on the Supreme Court?
- ii. Why would a country choose to allow the government to impose a new form of taxes? Many feel that income taxes are now the most burdensome form of taxes to pay. Would this amendment ever be ratified today?

c. Example:

- i. America passed and repealed an amendment to the Constitution. The Eighteenth Amendment banned the manufacture, sale, and transportation of alcoholic drinks (but many still felt it was legal to make alcohol at home and drink it there). It represents an attempt by America to help improve the morals in the country. After nearly 15 years, the Twenty-First Amendment was passed to repeal the Eighteenth Amendment and to allow alcohol to be sold in accordance with the laws of each state. Many felt that the prohibition of alcohol was a social experiment that should not have been conducted as a constitutional amendment.

d. Thoughts:

- i. Today, many people in America die as a result of drunk drivers. If the Eighteenth Amendment were still in place, there would likely be far less

of these accidents and far less fatalities. However, people would not be able to enjoy their time by consuming alcohol. Should the Eighteenth Amendment have been repealed, or should America have pressed forward with its prohibition of alcohol? Does alcohol bring any benefits to a country? What are some of the best ways to deal with the problems caused by consuming alcohol?

e. Example:

- i. Most of America required those who voted to pay a poll tax prior to placing their vote. After many years of using this method to help finance the government, many came to see the poll tax as something that kept the poor people from voting. Thus, in 1964, the Twenty-Fourth Amendment was ratified to bar the use of a poll tax. Also, in 1971, the Twenty-Sixth Amendment was passed to lower the voting age across the country to 18 years old. These two amendments probably represent the culmination of years of effort to extend the vote to as many people in America as possible, people such as Blacks, women, the poor, and those who are of legal age.

f. Thoughts:

- i. Are there any further changes that need to be made to make voting more fair and equal in America, or do these amendments finish the changes necessary to ensure a fair voting system?
- ii. Why did the Founders choose not to set the voting criteria?
- iii. What issues does America face today that may need to be addressed by a constitutional amendment? Is there anything that you would want to change about the Constitution or the government as it now stands? Is there anything that you would want to add to the Constitution?