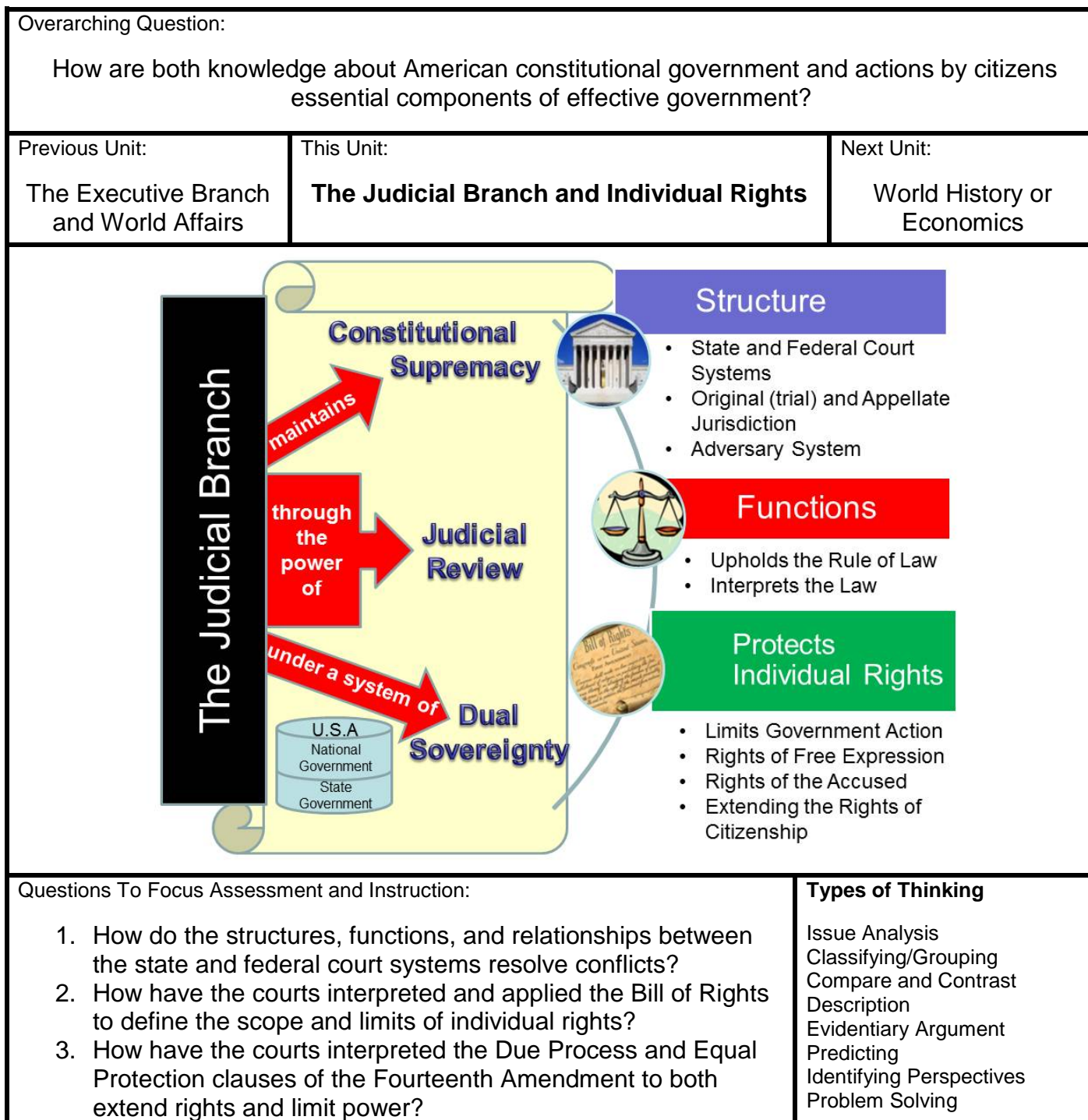


Civics and Government

Unit 5: The Judicial Branch and Individual Rights

Big Picture Graphic



Unit Abstract:

This unit explores the judicial branch of government, the power of judicial review, and how the courts maintain the Constitution as the highest law of the land. Students begin by revisiting the seminal decision of *Marbury v. Madison* to explore how the courts, as interpreter of the law, retains a separate and distinct power, yet employs the power of judicial review as a check on the power of the other branches. They explore the organization and processes of the judicial branch and how these reflect the constitutional principles of separation of powers and federalism. As students learn about the federal court system, they distinguish between appellate and original jurisdiction. Students analyze the role of federalism and explore the concept of dual sovereignty in our constitutional system through a case study. They learn that where any case involves the U.S. Constitution, both state and federal court systems end with the U.S. Supreme Court. They then turn their attention to the Bill of Rights and its explicit protections against governmental action. After reviewing why the Bill of Rights was added, they consider how each of the rights serves to limit the power of government and promote democracy. Since the First Amendment contains five fundamental rights essential to our constitutional democracy (freedom of the press, speech, religion, association, and petition), students take a close and critical look at the specific text of the amendment, and consider the types of protections included within its purview. After exploring several free speech and expression cases, students work in groups to create an original free speech narrative that falls within the current gray area of First Amendment jurisprudence. Working in triads, students use existing case law to role play the arguments of both plaintiff and the government, while the third student acts as a judge rendering a decision based on precedent. Next, students examine the group of amendments that work within the criminal justice system to protect the rights of the accused found in the Fourth, Fifth, Sixth, and Eighth Amendments. Students engage in a simulation, close and critical readings, and a case study to deepen their understanding of the Fourth Amendment. Using a multi-modal approach, students then explore the rights under the Fifth and Sixth Amendments and the criteria used by the Supreme Court to consider their nature and scope. They reflect upon a number of scenarios to help them distinguish between the Fifth Amendment protection against self-incrimination and the Sixth Amendment right to an attorney. Students also explore the remedy fashioned by the courts to protect violations – the exclusionary rule and its limits. In considering the prohibition of cruel and unusual punishment in the Eighth Amendment, students explore statistics on the death penalty and then consider some difficult cases, identifying the pros/cons on society in an effort to identify their own opinion on the issues presented. After engaging in a class discussion, they consider what factors make it difficult to decide whether a punishment is “cruel and unusual.” The unit concludes with an exploration of the Fourteenth Amendment and a review of the Incorporation Doctrine from Unit 2. Added to the Constitution as part of the Reconstruction Amendments at the end of the Civil War, the Fourteenth Amendment granted former slaves the rights of citizenship. Students explore how the Due Process and the Equal Protection Clauses in section 1 have significantly affected ideas of freedom and equality in the United States since its ratification. Students then consider affirmative action in college admissions through case studies and a debate. They then view a discussion on affirmative action from a Harvard University classroom. They conclude the unit by assessing how other groups have benefitted from the Equal Protection Clause of the Fourteenth Amendment and consider the current status of equal protection in the United States.

Focus Questions

1. How do the structures, functions, and relationships between the state and federal court systems resolve conflicts?
2. How have the courts interpreted and applied the Bill of Rights to define the scope and limits of individual rights?
3. How have the courts interpreted the due process and equal protection clauses of the 14th amendment to both extend rights and limit power?

Content Expectations:

- C2.1.4: Explain challenges and modifications to American constitutional government as a result of significant historical events such as the American Revolution, the Civil War, expansion of suffrage, the Great Depression, and the Civil Rights Movement.
- C2.2.2: Explain and evaluate how Americans, either through individual or collective actions, use constitutional principles and fundamental values to narrow gaps between American ideals and reality with respect to minorities, women, and the disadvantaged.
- C2.2.5: Use examples to investigate why people may agree on constitutional principles and fundamental values in the abstract, yet disagree over their meaning when they are applied to specific situations.
- C3.1.3: Analyze the purposes, organization, functions, and process of the judicial branch as enumerated in Article III of the Constitution.
- C3.1.5: Use case studies or examples to examine tensions between the three branches of government (e.g., powers of purse and impeachment, advise and consent, veto power, and judicial review).
- C3.2.1: Explain how the principles of enumerated powers, federalism, separation of powers, bicameralism, checks and balances, republicanism, rule of law, individual rights, inalienable rights, separation of church and state, and popular sovereignty serve to limit the power of government.
- C3.2.2: Use court cases to explain how the Constitution is maintained as the supreme law of the land (e.g., *Marbury v. Madison*, *Gibbons v. Ogden*, *McCulloch v. Maryland*).
- C3.2.3: Identify specific provisions in the Constitution that limit the power of the federal government.
- C3.2.4: Explain the role of the Bill of Rights and each of its amendments in restraining the power of government over individuals.
- C3.4.1: Explain why the rule of law has a central place in American society (e.g., Supreme Court cases like *Marbury v. Madison*, *US v. Nixon*; practices such as submitting bills to legal counsel to ensure congressional compliance with the law).

- C3.4.3: Explain the meaning and importance of equal protection of the law (e.g., 14th Amendment, Americans with Disabilities Act, equal opportunity legislation).
- C3.4.4: Describe considerations and criteria that have been used to deny, limit, or extend protection of individual rights (e.g., clear and present danger, time, place, and manner restrictions on speech, compelling government interest, security, libel or slander, public safety, and equal opportunity).
- C3.4.5: Analyze the various levels and responsibilities of courts in the federal and state judicial systems and explain the relationships among them.
- C5.3.1: Identify and explain personal rights (e.g., freedom of thought, conscience, expression, association, movement and residence, the right to privacy, personal autonomy, due process of law, free exercise of religion, and equal protection of the law).
- C5.3.2: Identify and explain political rights (e.g., freedom of speech, press, assembly, and petition; and the right to vote and run for public office).
- C5.3.3: Identify and explain economic rights (e.g., the right to acquire, use, transfer, and dispose of property, choose one's work and change employment, join labor unions and professional associations, establish and operate a business, copyright protection, enter into lawful contracts, and just compensation for taking of private property for public use).
- C5.3.4: Describe the relationship between personal, political, and economic rights and how they can sometimes conflict. (also addresses C5.3.1, C5.3.2, C5.3.3).
- C5.3.5: Explain considerations and criteria commonly used in determining what limits should be placed on specific rights.
- C5.3.6: Describe the rights protected by the First Amendment, and using case studies and examples explore the limit and scope of First Amendment rights.
- C5.3.7: Using the 4th, 5th, 6th, 7th, and 8th Amendments, describe the rights of the accused; and using case studies and examples explore the limit and scope of these rights.
- C5.3.8: Explain and give examples of the role of the 14th Amendment in extending the protection of individual rights against state action.
- C5.3.9: Use examples to explain why rights are not unlimited and absolute.
- C6.1.5: Make a persuasive, reasoned argument on a public issue and support [it] using evidence (e.g., historical and contemporary examples), constitutional principles, and fundamental values of American constitutional democracy; explain the stance or position.

Common Core State Standards for Literacy in History and Social Studies

- RH.9-10.1:* Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information.
- RH.9-10.2:* Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.
- RH.9-10.4:* Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social studies.
- RH.9-10.5:* Analyze how a text uses structure to emphasize key points or advance an explanation or analysis.
- RH.9-10.6:* Compare the point of view of two or more authors for how they treat the same or similar topics, including which details they include and emphasize in their respective accounts.
- RH.9-10.8:* Assess the extent to which the reasoning and evidence in a text support the author's claim.
- RH.9-10.9:* Compare and contrast treatments of the same topic in several primary and secondary sources.
- RH.9-10.10:* By the end of grade 10, read and comprehend history/social studies texts in the grades 9-10 text complexity band independently and proficiently.
- WHST.9-10.4:* Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.
- WHST.9-10.5:* Develop and strengthen writing as needed by planning, revising, editing, rewriting, or trying a new approach, focusing on addressing what is most significant for a specific purpose or audience.
- WHST.9-10.9:* Draw evidence from informational texts to support analysis, reflection, and research.
- WHST.9-10.10:* Write routinely over extended time frames (time for reflection and revision) and shorter time frames (a single sitting or a day or two) for a range of discipline-specific tasks, purposes, and audiences.

Key Concepts

adversary system
constitutional supremacy
dual sovereignty
due process
equal protection

government (state) action
independent judiciary
individual rights
judicial review
jurisdiction
precedent
rule of law
trial/appellate/supreme courts

Duration

3 weeks

Lesson Sequence

Lesson 1: Article III: The Judicial Branch
Lesson 2: Organization, Structure, and Processes of the Judicial Branch
Lesson 3: What is the Bill of Rights?
Lesson 4: The First Amendment
Lesson 5: The Rights of the Accused Part I: Introduction and the Fourth Amendment
Lesson 6: The Rights of the Accused Part II: The Fifth, Sixth, and Eighth Amendments
Lesson 7: Extending the Rights of Citizenship Part I: Introduction to the Fourteenth Amendment and Due Process
Lesson 8: Extending the Rights of Citizenship Part II: Equal Protection Clause of the Fourteenth Amendment and Affirmative Action

Assessment

Resources

Equipment/Manipulative

Computer with Internet Access and Projector

Student Resource

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