



Unit of Instruction on the Judicial Branch of Government

Lesson Plan Three

Judicial Independence

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Judicial Independence: A Four-Part Lesson

Overview

These materials provide a four-day lesson on judicial independence. For each day, the lesson includes additional online resources for teachers, lecture notes, discussion questions, and suggested activities and assignments with accompanying handouts and overheads.

The purpose of this lesson is to educate students about the proper role of the judiciary in relation to the legislative and executive branches; the factors that judges take into account in deciding cases; how the political branches and the public should, and should not, respond to judicial decisions; and how judges are selected and reselected.

This four-part lesson is flexible and adaptable. With minor adjustments, each day's material may be taught as a stand-alone lesson or in combination with another day's material. For example, Day 2 & Day 3 or Day 3 & Day 4 would work well as two-day lessons, and Day 2 may be taught as a single lesson. Also note that Day 1 may be skipped if this material has already been covered in other lessons.

Objectives

- Identify the three branches of government and the role of each branch.
- Understand the concepts of “separation of powers” and “checks and balances” and the role of the courts in these systems.
- Understand how judges make decisions.
- Understand the concept of “judicial independence,” why it is important for our courts, and how it can be threatened.
- Understand how judges are selected and retained in the federal system and in your state, and how this relates to judicial independence and accountability.

Day 1

Separation of Powers and Checks and Balances

Additional Resources

Dialogue on the Separation of Powers, from the American Bar Association
<http://www.abanet.org/publiced/features/sepdialogue1.pdf>

The U.S. Constitution
<http://www.usconstitution.net/const.html>

U.S. State Constitutions and Web Sites
<http://www.constitution.org/cons/usstcons.htm>

Materials

“The U.S. Constitution: Articles I, II, and III—Relevant Excerpts” (pp. 12-14)

“Separation of Powers and Checks and Balances” flowchart—handout (p. 15)

“Separation of Powers and Checks and Balances” flowchart—overhead (p. 16)

“In the News: Separation of Powers and Checks and Balances” (p. 17)

Lecture Notes

(*Dialogue on the Separation of Powers*—see Additional Resources, above—provides additional lecture material.)

Our federal government is based on the principles of **separation of powers** and **checks and balances**.

Separation of powers means that all of the government’s powers are not concentrated in one person or group. Instead, each branch of government has its own area of authority.

According to Article I of the U.S. Constitution, the **legislature** (Congress) **makes the law**.

According to Article II, the **executive** (the President) **enforces the law**.

According to Article III, the **judiciary** (the federal courts) **interprets the law**.

While each branch has its own powers, each branch can also “check” the exercise of power by the other branches.

State constitutions follow the same principles of **separation of powers** and **checks and balances**.

Discussion Questions

- Why did the Framers believe it was important to separate the powers of government among multiple branches and officials?

According to U.S. Supreme Court Justice Louis Brandeis, “The doctrine of the separation of powers was adopted ... not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but ... to save the people from autocracy.” *Myers v. United States* (1926).

- Provide students with the “The U.S. Constitution: Articles I, II, and III—Relevant Excerpts.” Ask them to identify examples of checks and balances from Articles I, II, and III of the U.S. Constitution. Examples should include the following:

Congress can **impeach and remove from office** members of the executive branch and federal judges for “treason, bribery, or other high crimes and misdemeanors.”

If the President does not enforce a law as Congress meant for it to be enforced, or if the courts do not interpret the law as Congress intended, Congress can **amend the law**.

Congress can **create new courts and judgeships, define the courts’ jurisdiction**—what kinds of cases they can hear, and **determine the courts’ funding**.

The President has the power to **veto laws** that Congress passes. Congress can **override vetoes** with a two-thirds majority.

The President **nominates federal judges**, and the Senate **confirms federal judges**.

The Senate **confirms treaties** that the President makes with other countries.

The courts can **declare laws and executive actions unconstitutional**. This is known as **judicial review**. (Note: This power is not explicitly given to the courts by the Constitution, but it is a power the courts have exercised since 1803 as a check on the other two branches.)

Activities & Assignments

- Distribute the blank “Separation of Powers and Checks and Balances” handout and have the students place the powers of each branch in the appropriate locations, with the arrows

representing powers that are checks on the other branches. Use the completed handout as an overhead to review the correct answers. (You might do the same exercise for the powers of each branch as defined in your state constitution.)

- Divide the class into groups of 3-4 students each. Provide each group with a different newspaper with national circulation. Ask each group to identify a story that mentions the powers of at least one branch of government or raises the issue of separation of powers. Ask them to answer the questions on the “In the News” handout, and report back to the class after a 15-minute discussion.

Day 2

Judicial Decision Making

Additional Resources

“Precedent” (from *American Law Encyclopedia, Vol. 8*)
<http://law.irank.org/pages/9325/Precedent.html>

History of Brown v. Board of Education (from the Administrative Office of U.S. Courts)
http://www.uscourts.gov/outreach/resources/brown_journey.htm

Materials

“You Be the Judge: Students and the First Amendment”—handout (p. 18-19)

“*Tinker v. Des Moines* (1969): The U.S. Supreme Court’s Decision”—overhead (p. 20)

Lecture Notes

(“Precedent”—see Additional Resources, above—provides additional lecture material.)

As discussed on Day 1, the role of the judicial branch in our **separation of powers** system is to **interpret the law**. Every case that a judge decides will involve at least one **law**, whether it is a provision of a constitution, a statute passed by a legislature, or a rule or policy adopted by an executive branch official (e.g., a president or a governor) or agency (e.g., a school board.) The judge is expected to **interpret the law**—determine what it means—and apply it to the facts of the case the judge is deciding.

In our legal system, judges are expected to interpret laws consistently with how they have been interpreted in past cases that raised similar issues. These past cases are known as **precedents**, and judges use them in reaching their decisions.

Discussion Questions

- Why should judges follow precedent? What advantages does this provide in our legal system?

Students should talk about such values as consistency, fairness, and efficiency in their answers.

- Should judges have the power to overrule or change precedents? Are there ever any good reasons for judges to do so?

The U.S. Supreme Court's decision in *Brown v. Board of Education* (1945) is a good example to use here. The Court overruled *Plessy v. Ferguson* (1896) in the *Brown* decision. (*History of Brown v. Board of Education*—see Additional Resources above—provides accessible summaries of these cases.)

Activities and Assignments

- *NOTE: This activity should be conducted before any lecture or discussion on this topic takes place.* Divide the class into groups of 3-4 students each, and pose the following question: “What do judges use to make their decisions, or what do they base their decisions on?” Ask someone from each group to write down all of their ideas, and then ask them to rank their answers with #1 being the most important for a judge’s ruling. Have each group report on their answers and their reasons for ranking their answers as they did.

When they are done reporting out and discussing, have them circle (if they have on their list) **laws** (e.g., constitutions, statutes) and **precedents** (previous court decisions). Lead a discussion on how laws and precedents determine a judge’s decisions.

- *NOTE: You will begin this assignment on Day 2 and conclude it on Day 3.* *Tinker v. Des Moines*, a case decided by the U.S. Supreme Court in 1969, provides a relevant and easily understandable example of how judges interpret and apply the law and precedent in reaching their decisions. In the *Tinker* case, the Court ruled that students have a First Amendment right to express political opinions if the expression does not interfere with school order and discipline. The handout “You Be the Judge: Students and the First Amendment” provides a summary of the facts of the *Tinker* case, the legal issue raised, the laws involved, and the relevant precedents. (For the purpose of this assignment, the name of the case has been omitted so that students will be less likely to look up the actual case and find out how the Court decided, and the facts have been “modernized” slightly so that what was originally the Vietnam War is now the Iraq War.)

Distribute the handout and review with the students the facts, issue, laws, and precedents in the case. As an in-class or homework assignment, ask the students to take on the role of the judge, determine how they would take these factors into account to decide the case, and write up an explanation of their decision.

Day 3

Responding to Judicial Decisions

Additional Resources

“The Impact of an Independent Judiciary on American Life and Law” (from the Administrative Office of U.S. Courts)

<http://www.uscourts.gov/outreach/resources/independentjudiciary.html>

“A History of Judicial Independence” (from the Administrative Office of U.S. Courts)

<http://www.uscourts.gov/outreach/resources/judicialindependence/history.html>

“The Role of the Courts in Our System of Checks and Balances” (from the Administrative Office of U.S. Courts)

<http://www.uscourts.gov/outreach/resources/judicialindependence/checksandbalances.html>

“The Impeachment Trial of Samuel Chase” (from Answers.com)

<http://www.answers.com/topic/impeachment-trial-of-samuel-chase>

Judicial Selection in the States website, “Removal of Judges” (from the American Judicature Society)

<http://www.judicialselection.us/>

Materials

“Responding to Judicial Decisions: Infringement on Independence or Appropriate Accountability?” (p. 21)

Lecture Notes

(“The Impact of an Independent Judiciary on American Life and Law,” “A History of Judicial Independence,” and “The Role of the Courts in Our System of Checks and Balances”—see Additional Resources, above—provide additional lecture material.)

Judicial independence means that judges are free to decide cases impartially—based solely on the facts, the **law**, and **precedent**. It means that they do not need to worry about professional or political retaliation for making decisions that are unpopular with the **legislative** and **executive branches** and the public.

The Framers of the U.S. Constitution believed that having an independent judiciary, free from popular and political pressures, was essential to protecting the rights guaranteed in the Constitution. Since the **legislative** and **executive branches** are chosen by the public—by a majority of voters, the Framers believed that the **judicial branch** should be insulated from

public opinion in order to protect minority interests. (Note that U.S. Senators were originally chosen by state legislatures, which are elected by state voters.)

Judicial accountability means that judges are held responsible for, or are answerable for, their actions as judges.

One means of ensuring **judicial accountability** is through a **judicial disciplinary process**. Judges in both the federal and state court systems have a code of conduct that they are expected to follow. The code of conduct specifies judges' ethical responsibilities. For example, judges are expected to disclose any association they may have with the parties or attorneys in the cases they hear; they are expected to behave always in a way that promotes public confidence in the courts; they are expected to be patient with and courteous to the parties, attorneys, witnesses, and jurors in the cases they hear.

If judges violate this code of conduct, they can be disciplined. Federal judges may be publicly or privately reprimanded, asked to resign, or barred from hearing and deciding cases; but they may only be removed from office through the **impeachment process**.

In nearly all states, state court judges may also be **impeached** and removed from office, but there are other processes as well through which state court judges may be removed from office. When a complaint is filed against a judge, a commission made up of lawyers, judges, and citizens determines whether a judge has violated the state's code of judicial conduct, and if so, recommends what disciplinary action should be taken against the judge. In most states, the **state supreme court** decides what kind of discipline is appropriate—reprimand, suspension, fine, or in serious situations, removal from office.

In several states, judges may also be removed through a rarely used process known as **legislative address**, and in a few states, judges may be removed through **recall elections**.

For information about how judges may be removed from office in your state, visit the *Judicial Selection in the States* website (<http://www.judicialselection.us/>), select your state, and click on "Removal of Judges."

Discussion Questions

- Refer back to the discussion on Day 1 of **separation of powers** and **checks and balances**, and Articles I, II, and III of the U.S. Constitution. What steps did the Framers take to ensure the independence of federal judges in deciding cases? How do these provisions help protect **judicial independence**?

Students should mention that federal judges have **life tenure**, their **salaries** cannot be reduced while they are in office, and they can only be removed from office through the **impeachment** process. They should also recognize that these provisions prevent judges

from being removed from office or having their salaries cut for making decisions that other government officials and/or the public disagree with.

- However, there are ways that the other branches can “check” the courts, or hold them accountable for their decisions. How can federal courts and judges be held accountable for their decisions?

Checks mentioned by students should include the fact that the legislature controls the courts’ **jurisdiction**—the types of cases courts can hear; the legislature determines the courts’ **funding**; and the legislature can **amend laws**—rewrite them—if it disagrees with how a court has interpreted them.

It is important to emphasize here that the principle of **judicial independence** means that federal judges cannot be held accountable—or “checked”—by impeaching and removing them from office for making unpopular decisions. This principle was recognized in the early 1800s, when the House of Representatives impeached a U.S. Supreme Court justice for political reasons, but the Senate acquitted him and did not remove him from office. (See “The Impeachment Trial of Samuel Chase”—see Additional Resources, above—for more information.)

- Are the executive and legislative branches influenced by what citizens think and want—by public opinion? Should the judicial branch be influenced by public opinion? Why or why not?

Assignments and Activities

- *NOTE: This activity should take place at the beginning of class.* After students have turned in their “You Be the Judge: Students and the First Amendment” assignments, invite them to share their decisions and their reasoning with the class. Using the “*Tinker v. Des Moines* (1969): The U.S. Supreme Court’s Decision” overhead, describe how the Court decided the case, and ask students to discuss whether they agree or disagree with the Court’s decision based on the facts, the law, and the precedents.

Make note of the fact that the Court’s decision was not unanimous. Seven justices interpreted the law and applied the precedents to uphold the rights of the students, but two justices disagreed and sided with the school district. This is very often the nature of judging, especially in cases involving constitutional rights—there is no “right” or “wrong” answer. This is one reason that it is often inappropriate to attack judges for making unpopular decisions, which brings us to the Day 3 topic—responding to judicial decisions.

- Following the lecture and discussion, divide the class into groups of 3-4 students each, and give each group the “Responding to Judicial Decisions” handout. Have each group consider whether the response to the judge’s or court’s decision in each scenario infringes on judicial

independence or provides appropriate judicial accountability. As a class, discuss each scenario, and have each group share their reasons for giving the answer that they did.

Note that there is no right or wrong answer re: whether each scenario violates judicial independence. Each one describes a legal response to a judge's or court's decision. Students should consider and decide for themselves whether each response places inappropriate popular or political pressure on a judge in deciding that case or in deciding future similar cases, or whether the response is an appropriate way to check the judge or the court.

Day 4: Judicial Selection, Independence, and Accountability

Additional Resources

Judicial Selection in the States: How It Works, Why It Matters, Part III (from the American Judicature Society and the Institute for the Advancement of the American Legal System)
http://www.judicialselection.us/uploads/documents/JudicialSelectionBrochureemail_A2E54457CD359.pdf

Materials

Judicial Independence Quiz (p. 22)

Lecture Notes

(Part III of *Judicial Selection in the States: How It Works, Why It Matters*—see Additional Resources, above—provides more information on selection and reselection methods for state court judges.)

As discussed on Day 1, federal judges are nominated by the President and confirmed by the Senate, but state judges are selected in one of four ways: appointment by the governor from a nominating commission's list (also known as **merit selection**), **appointment by the governor** (usually with legislative confirmation), **popular election**, and **election by the legislature**.

Another difference between federal and state judges is that, except in three states (Massachusetts, New Hampshire, and Rhode Island), state judges do not have **life tenure**. They serve limited terms ranging from 4 to 15 years, and they must be reselected when their terms expire. State court judges may keep their seats in one of three ways: **retention election** (where voters are asked whether a judge should remain in office), **reappointment**, and **reelection**.

Selection and reselection methods and term lengths are significant factors in determining the extent of judges' **independence** and **accountability**. The fact that most state judges do not have life tenure and must be reselected when their terms expire means that judges may feel they need to consider the views of voters, the governor, or legislators—whoever is responsible for reselecting them—when they make their decisions, rather than basing their decisions only on the facts of the case, the law, and precedent.

Discussion Questions

In states where judges are elected and reelected by voters and serve short terms, is there a greater emphasis on **judicial accountability** or **judicial independence**? What about states where judges are appointed and have life tenure, as in the federal system? What seems to

be the emphasis in your state, based on selection and reselection methods and term lengths for judges?

Activities & Assignments

- *NOTE: This homework assignment should be given the day before this lesson is conducted.* Ask students to research how judges of the highest court in your state (usually called the supreme court) are chosen, how long their terms of office are, and how they are reselected when their terms end. (One source for this information is the *Judicial Selection in the States* website from the American Judicature Society, at <http://www.judicialselection.us/>.)
- Administer the Judicial Independence Quiz to gauge how much students have learned from this lesson.

THE CONSTITUTION OF THE UNITED STATES

Articles I, II, and III—Relevant Excerpts

Article I - The Legislative Branch

Section 2 - The House

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3 - The Senate

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Section 7 - Revenue Bills, Legislative Process, Presidential Veto

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8 - Powers of Congress

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;
To establish Post Offices and Post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article II - The Executive Branch

Section 1 - The President

The executive Power shall be vested in a President of the United States of America.

Section 2 - Civilian Power over Military, Cabinet, Pardon Power, Appointments

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3 - State of the Union, Convening Congress

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4 - Disqualification

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III - The Judicial Branch

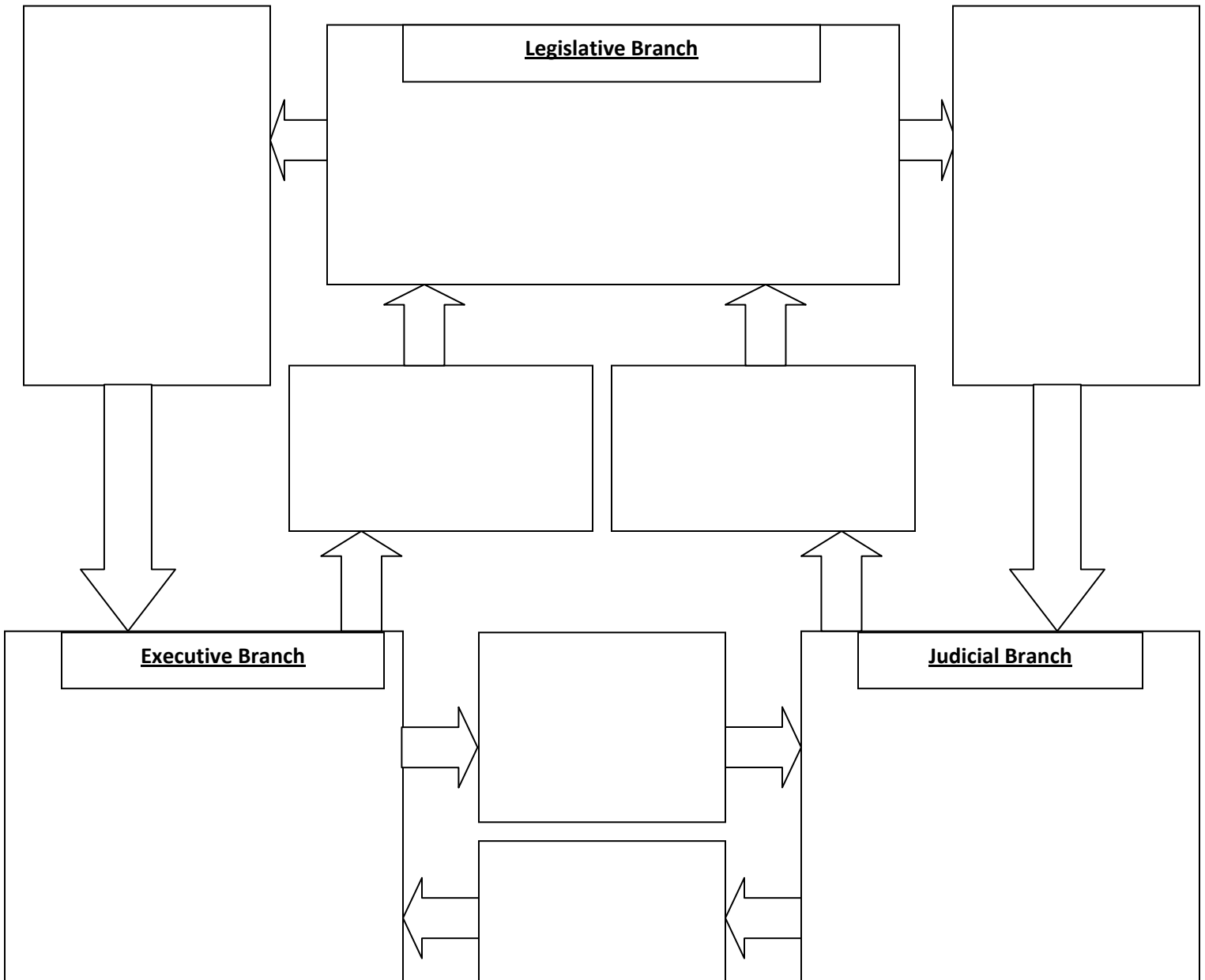
Section 1 - Judicial powers

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Section 2 - Trial by Jury, Original Jurisdiction, Jury Trials

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

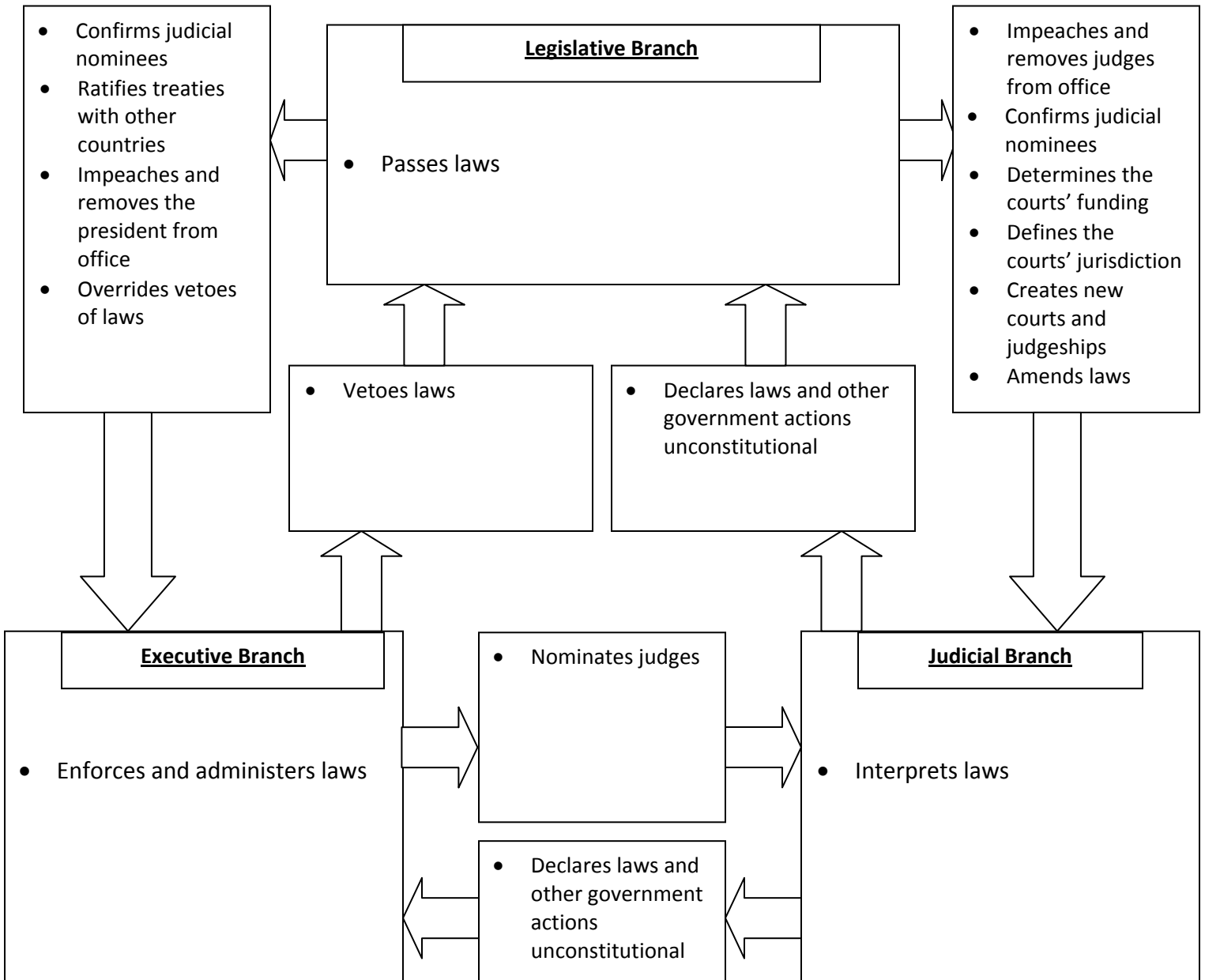
Separation of Powers and Checks and Balances



Powers:

- Passes laws
- Impeaches and removes judges from office
- Ratifies treaties with other countries
- Vetoes laws
- Impeaches and removes the president from office
- Confirms judicial nominees
- Defines the courts' jurisdiction
- Interprets laws
- Nominates judges
- Creates new courts and judgeships
- Amends laws
- Enforces and administers laws
- Declares laws and other government actions unconstitutional
- Determines the courts' funding
- Overrides vetoes of laws

Separation of Powers and Checks and Balances



You Be the Judge: Students and the First Amendment

Facts:

On March 20, 2008, the five-year anniversary of the invasion of Iraq by the United States and other nations, an eighth-grade student named Mary Beth wore a black armband with a peace symbol on it to school as a symbol of mourning for those who were dying in the Iraq War. This violated a school board policy that banned armbands worn as symbols of protest from all schools in the district, and Mary Beth was suspended from school and sent home. Chris, a sophomore at another school in the district, was suspended for the same reason. The next day, three more students, including Mary Beth's older brother John, were suspended for wearing black armbands with peace symbols.

The school board had adopted the "no armbands" policy because it feared the armbands would "have a disruptive influence at the school." In fact, there were several incidents on the days the students wore the armbands—some students made fun of the protestors and some students told other students to leave the protestors alone.

On behalf of Mary, John, and Chris, a state civil liberties organization filed a lawsuit against the school board in a federal trial court. The students believed they had a right to express their opinions about the Iraq War. However, the judge agreed with the school board that it was more important to maintain order and discipline in the school than to allow the students to express their political views.

The students took the case to a federal appeals court, but there was a tie vote. The case was then appealed to the U.S. Supreme Court, which agreed to hear it.

Issue:

Does a school board policy that prohibits wearing armbands as a symbol of political protest violate the First Amendment's guarantee of freedom of speech?

Laws:

- **First Amendment, U.S. Constitution**
"Congress shall make no law ... abridging the freedom of speech ..." [Note: The First Amendment applies to state governments and agencies, too.]
- **Title 42, §1983 of the U.S. Code**
This is a federal law that allows people to file lawsuits in federal court when they believe their constitutional rights have been violated.

- **School board policy**

Armbands worn as symbols of political protest are not allowed. Students wearing armbands to school will be asked to remove them, and if they refuse, they will be suspended until they return without the armbands.

Precedents:

- ***Waugh v. Mississippi University (1915)***

Public schools are created by and controlled by the state. The state can prohibit activities in schools that “divide the attention of the students and distract from that singleness of purpose which the State desires to exist in its public educational institutions.”

- ***West Virginia Board of Education v. Barnette (1943)***

Saluting the flag is a way to communicate ideas, so it is a form of speech. Forcing students in public schools to salute the flag (or communicate a particular message) violates the First Amendment’s guarantee of free speech.

- ***Cox v. Louisiana (1965)***

The rights of free speech and assembly “do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time.”

- ***Keyishian v. Board of Regents (1967)***

The classroom is a “marketplace of ideas,” and the future of our country depends on leaders who have had “wide exposure to that robust exchange of ideas.”

Tinker v. Des Moines (1969): **The U.S. Supreme Court's Decision**

By a vote of 7-2, the U.S. Supreme Court ruled in favor of the students.

Justice Abe Fortas wrote the majority opinion. He said that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” The students had the right to express their opinion, since that expression did not substantially interfere with school discipline or the rights of other students.

Justice Hugo Black dissented. According to Black, no person has “a right to give speeches or engage in demonstrations where he pleases and when he pleases.” The armbands did “divert students’ minds from their regular lessons.” The Court should leave school discipline up to the schools and what they think is best.

Responses to Judicial Decisions: Infringement on Independence or Appropriate Accountability?

1. Judge Jane Brown is known for yelling at witnesses during trials who, in her opinion, take too long to answer questions. One witness files a complaint against Judge Brown with the state's judicial conduct commission, since the state's code of judicial conduct says that judges should maintain "decorum and temperance." The commission publicly reprimands the judge.
2. After the U.S. Supreme Court rules that including "under God" in the pledge of allegiance violates the Establishment Clause of the First Amendment, members of Congress propose a law that would remove all cases involving the pledge from the jurisdiction of the federal courts.
3. Judge Fred Foster sentences a man convicted of sexual assault to 60 days in prison followed by completion of a treatment program for sex offenders. The governor calls for the judge to resign, and several legislators suggest that he be impeached.
4. The Acme Corporation gave \$10,000 to the campaign of Judge David Taylor when he was running for office last year. Sarah Collins, a former Acme employee, is suing the corporation for wrongful termination. The case is randomly assigned to Judge Taylor, and Collins asks the judge to disqualify himself from hearing the case and allow another judge to hear it.
5. Judge John Smith ruled that demonstrators must stay at least 100 feet away from women seeking counseling or services at abortion clinics. The local newspaper publishes an editorial criticizing the judge's decision, and people picket on the sidewalks in front of his home.
6. Judge Susan Mills grants a marriage license to a same-sex couple, even though state law prohibits same-sex marriages. The state supreme court later upholds Mills' decision and declares the law unconstitutional, but a group that supports "family values" mounts a campaign to oppose Judge Mills' retention in the upcoming election.
7. Some state legislators are unhappy with a decision the state supreme court has made regarding funding for public education. These legislators promise to cut the court's funding next year if it does not reconsider the decision.

Judicial Independence Quiz

1. Why did the Framers base our system of government on the principles of “separation of powers” and “checks and balances”?
2. Name one “check” that the judicial branch may exercise against the legislative branch.
3. Name one “check” that the executive branch may exercise against the legislative branch.
4. Name one “check” that the legislative branch may exercise against the judicial branch.
5. Name one “check” that the legislative branch may exercise against the executive branch.
6. Describe *precedent* in terms of how it is used by judges to decide cases.
7. What does *judicial independence* mean?
8. T F Federal judges may be removed from office through recall elections.
9. How are judges of our highest state court selected and reselected, and how long are their terms?
10. If a state’s judges are elected and reelected by the voters and serve short terms, is that state emphasizing judicial independence or judicial accountability?