

Unit 2- Constitution, Federalism, and Civil Liberties/ Civil Rights

SSCG3: Demonstrate the knowledge of the framing and structure of the United States Constitution.

SSCG3a: Analyze debates during the drafting of the Constitution, including the Three-Fifths Compromise, the Great Compromise, and the Commerce Clause.

The creation of the United States Constitution was a secretive process highlighted by compromises. Representatives from twelve of the thirteen states (Rhode Island was the only state that did not send representatives) met in Philadelphia on May 25, 1787, in the Philadelphia Independence Hall for what was to be known as the **Philadelphia Convention**. Over the hot summer, the delegates met in secret, guarded by soldiers, with windows closed to discourage eavesdroppers. There were 55 delegates in attendance. This group of delegates became known as the **Framers** of the United States Constitution. **George Washington** was unanimously selected as the president of the convention. The framer's final meeting of the Philadelphia Convention was September 17, 1787.

The summer months of deliberation led to several compromises. The **Three-Fifths Compromise** resulted from a debate over representation in the House of Representatives. The southern states wanted slaves to be counted in the population, therefore giving those states more representatives in the House. The northern states took the opposing view and did not want slaves counted. The Framers agreed to the Three-Fifths Compromise, which provided that all "free persons" should be counted as well as "three-fifths of all other persons". In addition, this same formula would be used to determine the amount of direct taxes to be levied by Congress.

The **Great Compromise** is also known as the Connecticut Compromise. There was much debate and conflict over representation in Congress; the larger states wanted representation based on population, while the smaller states wanted equal representation, regardless of population. The delegates of Connecticut developed a plan that would create two houses in Congress: The Senate and the House of Representatives. In the Senate, states would be represented equally. In the House, the representation for each state would be based on population.

The **Commerce Clause** established that the power to regulate foreign and interstate (between states) commerce would be a Congressional power. It is in Article I, Section 8, and Clause 3 of the Constitution. The **Commerce Compromise** set the foundation for the Commerce Clause. The southern states were fearful that Congress would be controlled by northern commercial interests, and that those interests would act against the interest of the agricultural southern states. Southern tobacco was the major American export at the time. The southerners feared that high export duties would be levied on the tobacco, and they were afraid that Congress would try to interfere with the slave trade. Under the **Commerce Compromise**, Congress was forbidden the power to tax the export of goods from any state, and Congress would not be able to interfere with the slave trade for a period of at least twenty years.

SSCG3b: Analyze how the Constitution addresses the weaknesses of the Articles of Confederation.

The **Articles of Confederation** were approved on November 15, 1777. There were various weaknesses in the Articles of Confederation; however, they did establish a more permanent government structure for the United States after declaring independence. The Articles were drafted by the Second Continental Congress. Under the Articles, each state maintained individual sovereignty and came together for issues related to common defense and protection of civil liberties. In order for the Articles of Confederation to be ratified, or formally approved, all thirteen of the states had to agree to the document. Eleven states ratified the Articles immediately. Delaware approved the Articles in February of 1779, and Maryland finally approved the Articles on May 1, 1781. Although it was a good starting point, there were many weaknesses.

The Articles of Confederation set up a simple government structure. Congress was the only body created and the members of Congress were chosen annually by the States; it was a **unicameral** government. Each state had one vote, regardless of population. The Articles did not create an executive branch or a judicial branch. Each year Congress chose a presiding officer, or chairman, from among the members. Congress did not have the power to tax and had to rely on asking the states to borrow funds. In addition, Congress did not have the power to regulate trade between the States and could not make the States obey the Articles of Confederation. Any changes, or amendments, to the Articles required the approval of all thirteen states, and that proved to be an impossible task.

The United States Constitution addressed the weaknesses of the Articles of Confederation. The Congress was established as bicameral (two houses) with the Senate and the House of Representatives. Three branches of government were created: legislative, executive, and judicial. Instead of a presiding officer, the executive branch established a President. Congress was given the power to tax and regulate commerce. The Constitution established those rights specifically given to the national government and outlined rights given to the States. Finally, a formal process to amend the Constitution was incorporated into the document.

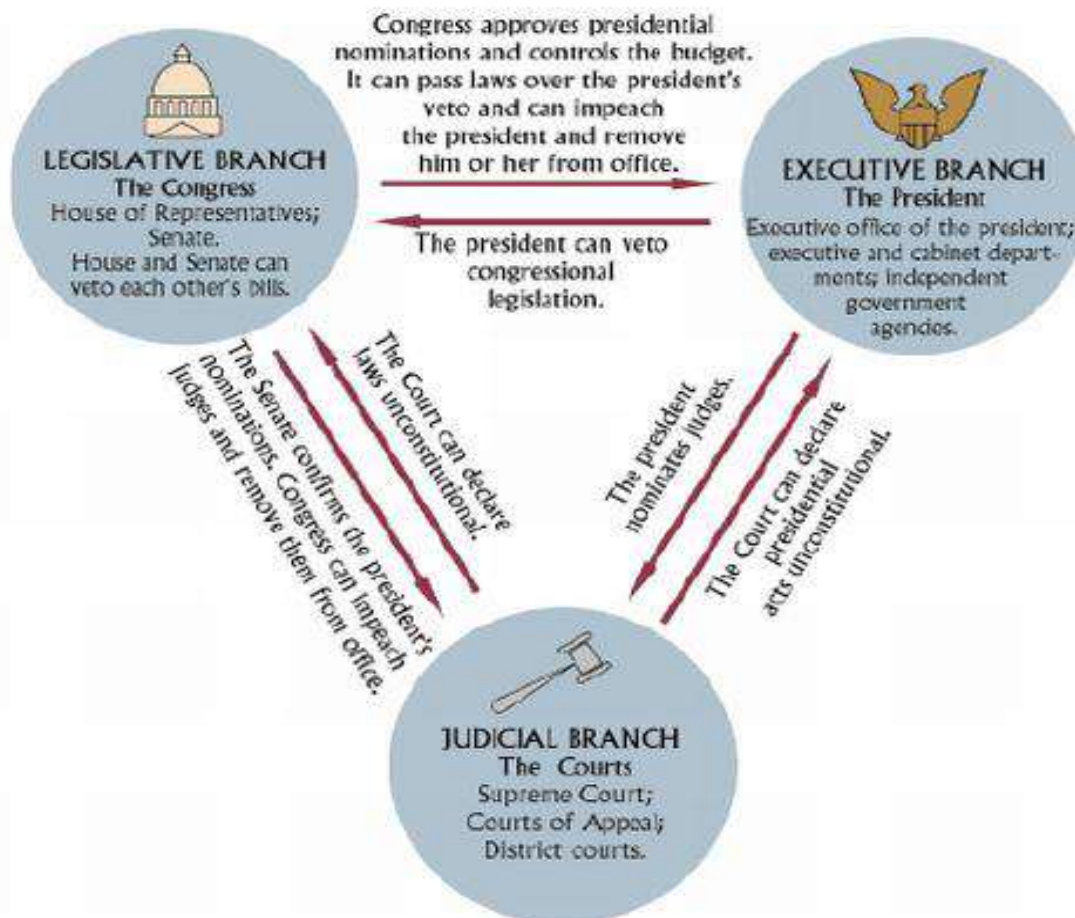
SSCG3c: Explain the fundamental principles of the United States Constitution, including limited government, the rule of law, federalism, separation of powers, checks and balances, and popular sovereignty.

The principle of **limited government** states that no government is all-powerful and can only do those things that the people have given it power to do. The people are the sole source of the government’s power and authority. The government is not above the law.

Rule of law holds that a government and its’ officers are subject to the law and not above the law.

Federalism is a method of distributing power where power is divided among the national, or central, government, and regional governments, such as states and cities. The national government has certain powers that states do not have, such as national defense, the power to coin money, and the power to regulate trade. Other powers belong solely to the states, while other powers are shared.

Separation of powers is a concept in which each of the three branches of government have separate powers and responsibilities. The powers assigned to each branch are outlined in the Constitution in Article I (legislative), Article II (executive), and Article III (judicial). The branches are considered separate but equal and have a complex system of **checks and balances**. Each branch has certain ‘checks’ on other branches that ensure the powers are not abused.



SSCG3d: Explain the key ideas in the debate over ratification made by the Federalists and the Anti-Federalists.

Two groups emerged in the debate around the Constitution – the Federalists and the Anti-Federalists. The **Federalists** favored ratification of the Constitution, and the **Anti-Federalists** opposed the ratification. The leaders of the Federalists were: Alexander Hamilton, James Madison, and John Jay. They focused on the weaknesses of the Articles of Confederation and supported ratification of the Constitution. They wrote and published a compilation of 85 essays and articles entitled *The Federalist Papers* under the pseudonym Publius. The Federalists wanted a strong national government; they feared that too much power to the states would lead to a fractured nation with each state operating like a separate nation.

The Anti-Federalists were led by Thomas Jefferson, Samuel Adams, John Hancock, Richard Henry Lee, and Patrick Henry. Their objections were many: too much power given to the central government and not enough powers to the states, no provisions to protect civil liberties, and the power to print money given to the national government and not the states.

SSCG4: Demonstrate knowledge of the organization and powers of the national government.

SSCG4a: Describe the structure, powers, and limitations of the legislative, executive, and judicial branches, as described in the Constitution.

The **legislative** branch was established by Article I of the United States Constitution and includes the House of Representatives and the Senate, which are collectively known as the United States Congress. The House of Representatives membership is based on state population and has a total of 435 representatives, while the Senate is comprised of 100 total members – two from each of the 50 states. The Constitution grants Congress the sole power to declare war, enact legislation, and approve or reject many Presidential appointments. Part of Congress' legislative authority includes the establishment of the annual budget for the United States' government. Congress levies taxes and tariffs and has the power to borrow money on behalf of the U.S. government. All members of the legislative branch are selected by the people.

The power of the **executive** branch is vested in the President of the United States according to Article II of the Constitution. The President is the country's Commander-in-Chief of the armed forces. The responsibilities of the executive branch include implementing and enforcing the laws passed by Congress, appointing the heads of federal agencies, nominating the members of the Cabinet, which serves as the President's key advisement team. The Vice President is a member of the executive branch. Both the President and Vice-President are selected by the people.

The **judicial** branch was created by Article III of the Constitution. Members of the judiciary branch are appointed by the President and confirmed by the Senate. The Congress has the authority to determine the structure of the judiciary, including the number of Supreme Court justices. While Congress determines the jurisdiction of federal courts, Congress has no authority over the decisions made by the Supreme Court. The federal judiciary has the sole authority to interpret the law and the constitutionality of laws and apply them to individual cases. In addition to creating the judiciary branch, Article III of the Constitution provides every person the right to a fair trial by a jury of one's peers.

SSCG4b: Analyze the relationship between the three branches in a system of checks and balances and separation of powers.

Under **checks and balances**, certain branches are empowered to prevent actions by other branches and induced to share power. They are fundamentally important to the structure and operation of United States government. The Framers viewed checks and balances as essential to protect the liberties granted in the Constitution. In addition, checks and balances prevent any one branch from becoming too powerful.



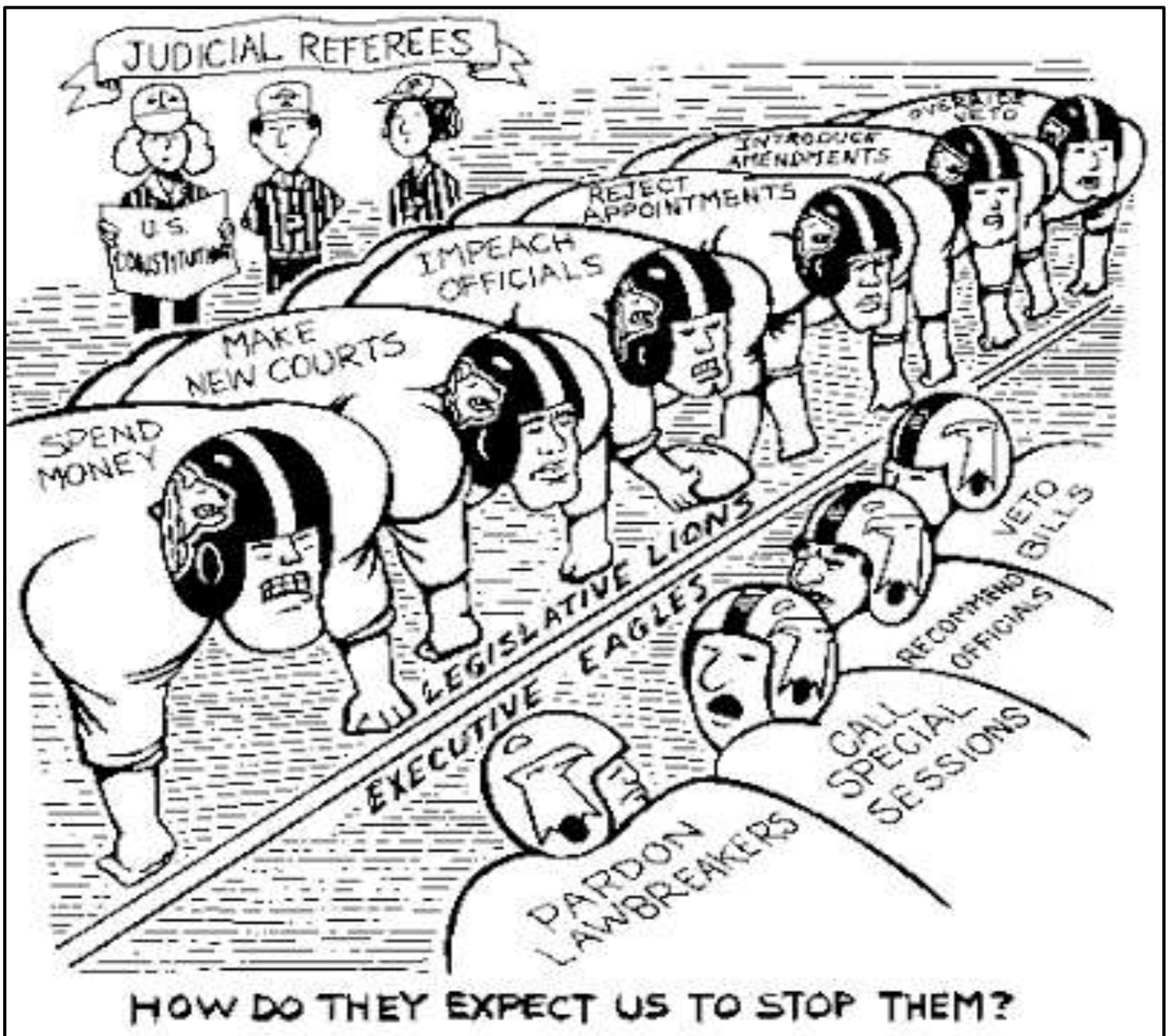
The checks and balances of the legislative branch over the executive branch include impeachment, override Presidential vetoes, approval of Presidential appointments and treaties, collect taxes and allocate federal funds, declare war, and select the President and Vice-President in a case where no candidate receives the majority of electoral votes.

The checks and balances of the legislative branch over the judicial branch are approve the appointment of federal judges, impeachment, initiate constitutional amendments, set the jurisdiction of federal courts, and change the size of the Supreme Court.

The checks and balances of the executive branch over the legislative branch include: veto power, the Vice President is the President of the Senate, Commander-in-Chief of the armed forces, and calling one or both house of Congress into an emergency session.

The checks and balances of the executive branch over the judicial branch are appointment of federal judges and pardon power.

The checks and balances of the judicial branch over both the legislative and executive branch is judicial review.

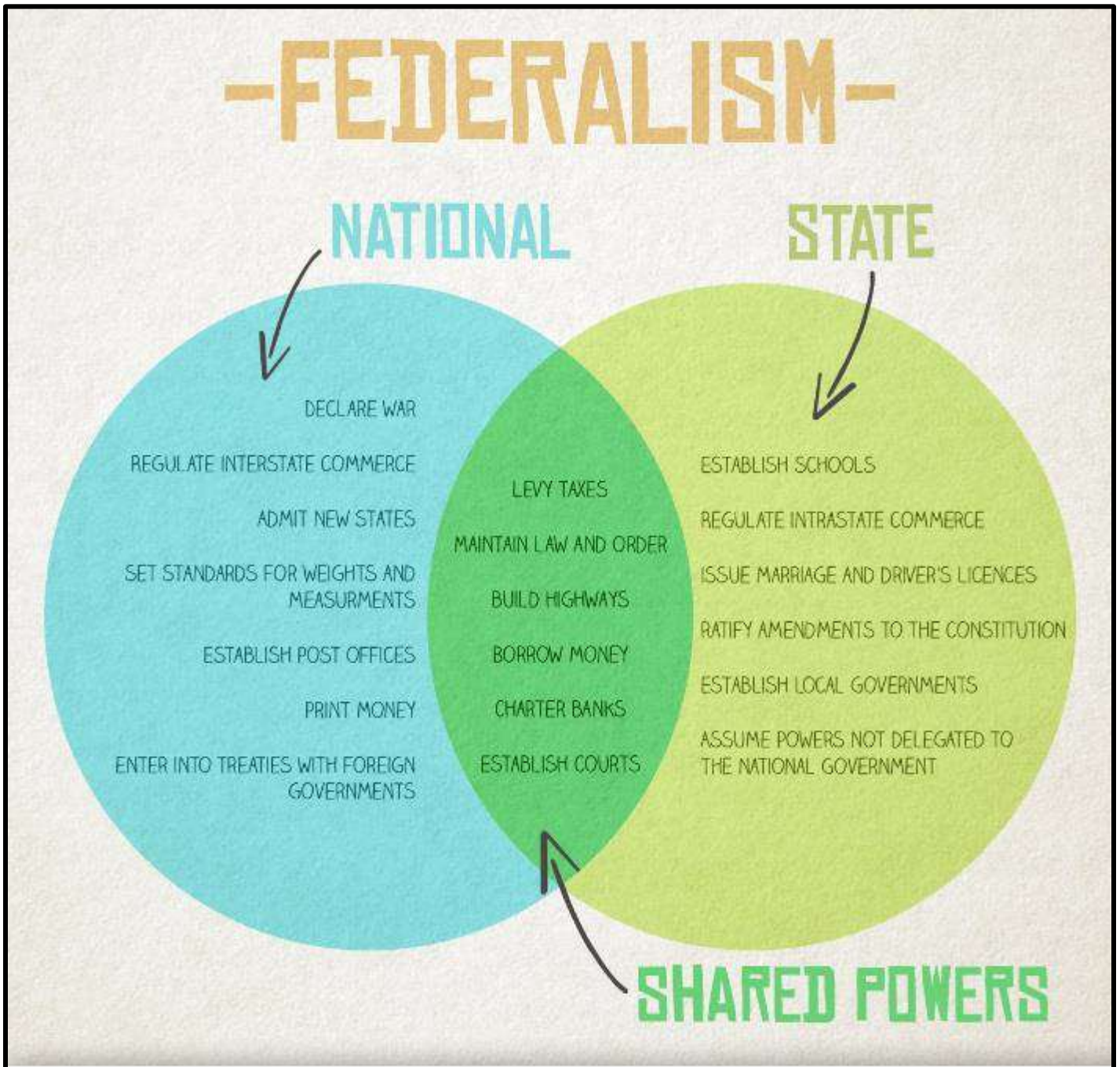


SSCG5: Demonstrate knowledge of the federal system of government described in the United States Constitution.

SSCG5a: Explain and analyze the relationship of state governments to the national government.

Federalism is a system of government in which a written constitution divides the powers of the government on a territorial basis between a national, or central, government, and several regional governments, typically referred to as States. Each level of government has its own set of powers. The Constitution sets out a **division of powers**; certain powers are assigned to the National government and other powers are assigned to the States. Each of the levels of government has its own areas of authority.

A major strength of federalism is that it allows for a more timely response to local matters and decisions by giving certain powers to the States. The National government's powers are focused on issues of national concern like defense and foreign relations. The following Venn diagram illustrates powers delegated to the national and state governments and powers shared between the national and state governments:



SSCG5b: Define and provide examples of enumerated, implied, concurrent, reserved, and denied powers.

Enumerated powers are also called expressed powers. The enumerated powers are delegated to the national government and are spelled out, or expressed, in the Constitution. Most of the enumerated powers can be found in Article I, Section 8. There are 27 powers given to Congress, including: the power to collect taxes, to coin money, to regulate commerce, to maintain a national defense, to declare war, fix the standards of weight and measurement, and grant patents and copyrights. The enumerated powers given to the President are: operating in the role of Commander-in-Chief, issuing pardons, and entering into treaties with foreign nations.

Implied powers are not expressly stated in the Constitution, but are reasonably suggested, or implied. Article I, Section 8, Clause 18 is referred to as the ‘necessary and proper clause’. The **necessary and proper clause** grants Congress the power to make any laws necessary to carry out the enumerated powers. The necessary and proper clause is also referred to as the **elastic clause**. Examples of Congress’ implied powers include: the building of the interstate highway system, the building of dams, and the prohibition of discrimination.

Concurrent powers are those powers that both the National and State governments possess and exercise. Concurrent powers are not given exclusively to the National government and at the same time are not denied to the States. Examples include: the power to levy and collect taxes and to define crimes and punishments.

Reserved powers are those powers not granted to the National government, but at the same time, not denied to the States. The scope of reserved powers is huge! Most of what government does is done by the States and their local governments. Examples of reserved powers include making laws regarding the minimum age to marry, the minimum age to purchase tobacco products, the minimum drinking age, laws regarding the ban of prostitution and gambling, requirements for businesses to obtain a license to operate, establish public schools, and the right to define criminal offenses and set punishments for violations.

Denied powers are set forth in the Constitution. These are powers that are expressly denied to the National government and include the reserved powers that are not denied to the States. Examples include create public schools, enact uniform marriage and divorce laws, conduct illegal searches and seizures, deny people the right to a trial by jury, and prohibit freedom of religion and free speech.

SSCG5c: Analyze the ongoing debate that focuses on the balance of power between state and national governments as it relates to current issues.

Much of the current debate on the balance of power between the national government and the state governments focuses on state governments challenging federal governments in what they view as overstepping constitutionally prescribed roles. Two current issues that highlight this argument are: the passing of the **Affordable Care Act (Obamacare)** and the perceived abuse by the President of **Executive Orders**.

Executive Orders are not specifically expressed in the Constitution; however, in Article II, there is a “grant of executive power”. Executive Orders are binding orders that have the same effect as law but do not require Congressional approval. They are intended to help guide federal agencies in matters that involve established laws. Many executive orders are intended to be symbolic. Current debates focus on the President’s use of executive orders to make laws, which goes against the separation of powers between the three branches of government.

A current debate on the misuse of Executive Orders surrounds the topic of immigration and amnesty. PBS aired a segment on the Executive Order President Obama issued on immigration. Click on the link to view the transcript of the segment: <http://www.pbs.org/newshour/bb/obamas-immigration-executive-actions-hold-legal-challenge-resolved/>.

SSCG5d: Analyze the Supremacy Clause found in Article VI and the role of the U.S. Constitution as the “supreme law of the land.”

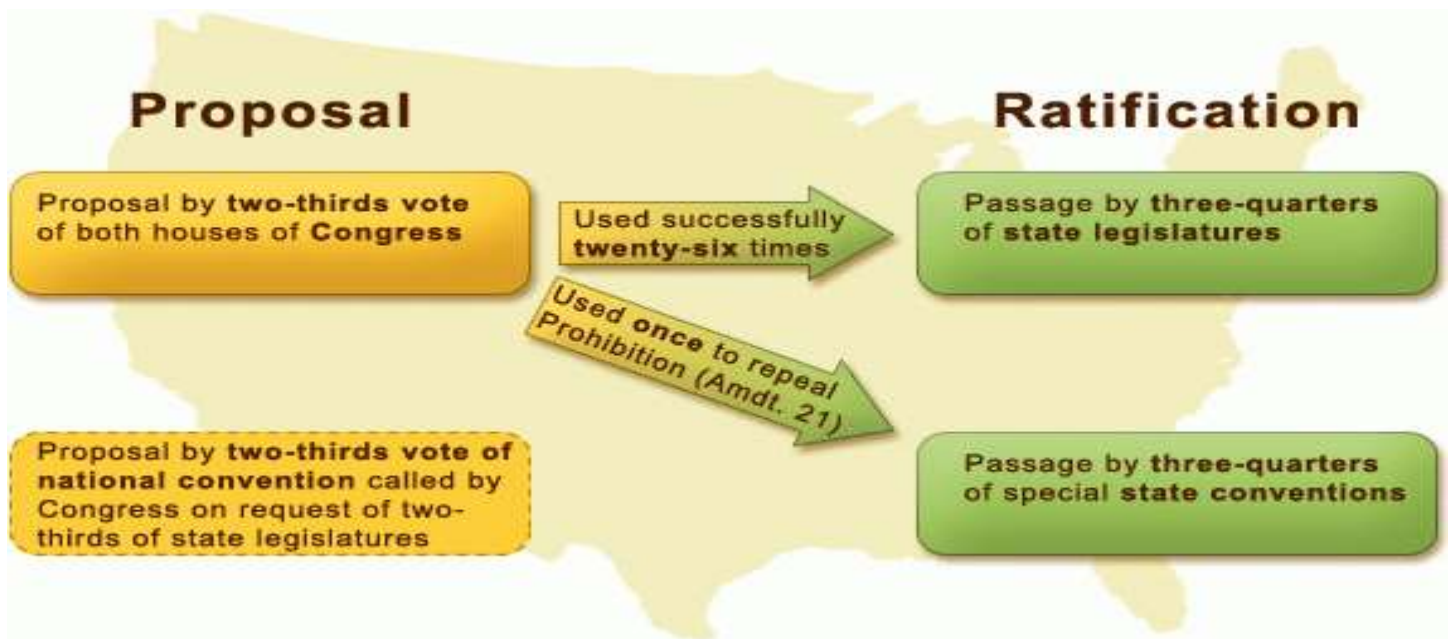
The Framers of the Constitution expected that conflicts would be inevitable between national laws and State laws. They wrote what is known as the **Supremacy Clause** into the Constitution. The clause is found in Article VI, Section 2: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which

shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.”

The Supremacy Clause means that the Constitution stands above all other laws, including laws of States. The Supreme Court has the responsibility of applying the Supremacy Clause.

SSCG5e: Describe the roles of Congress and the states in the formal process of amending the Constitution.

An **amendment** to the Constitution means a change to the Constitution. The Framers expected that changes would need to be made over time, and they set out a very detailed plan for how amendments to the Constitution could be proposed and ratified. Article V sets out two methods for the proposal and two methods for the ratification of constitutional amendments.



SSCG6: Analyze the meaning and importance of each of the rights guaranteed under the Bill of Rights and how each is secured.

The **Bill of Rights** includes the first ten amendments to the United States Constitution. The Bill of Rights was written by James Madison. There are currently 27 amendments. A major argument between the Federalists and Anti-Federalists focused on the Anti-Federalists’ viewpoint that the Constitution did not provide for protection of American citizen’s basic rights. Thomas Jefferson led the fight to ratify the Bill of Rights as a condition for Anti-Federalist support of ratification of the Constitution. The first ten amendments guarantee the: freedoms of belief and expression, of freedom and security of the person, and of fair and equal treatment before the law.

Bill of Rights:

First Amendment: Guarantees the freedom of religion, speech, and the press

Second Amendment: Guarantees the right to bear arms

Third Amendment: Protects against the forced quartering of troops

Fourth Amendment: Protects against unreasonable searches and seizures

Fifth Amendment: Guarantees a trial by jury and due process of law and guards against double-jeopardy and self-incrimination

Sixth Amendment: Outlines the rights of the accused, including a speedy and public trial

Seventh Amendment: Lays out the rules of common law

Eighth Amendment: Protects against cruel and unusual punishment and guards against excessive bail and fines

Ninth Amendment: Ensures that the individual rights that are not enumerated in the Constitution are secure

Tenth Amendment: Limits the power of the federal government by reserving all of the rights for the States not enumerated in the Constitution as national rights, nor denied to states



Critical Thinking Activity:

Analyze the meaning of the political cartoon in regard to the Second Amendment right to bear arms. Share your interpretation of the cartoon with your group.

SSCG7: Demonstrate knowledge of civil liberties and civil rights.

SSCG7a: Define civil liberties as protections against government actions (e.g., First Amendment).

Civil liberties are the protections against government. Civil liberties guarantee the protection of persons and property from the arbitrary acts of government. Examples of civil liberties include: freedom of religion, freedom of speech, freedom of the press, and the guarantee of a fair trial.

The **First Amendment** guarantees the freedom of religion, speech, and the press. “Congress shall make no law respecting an establishment of religion or prohibiting the exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the government for a redress of grievances.”

The **Bill of Rights** includes the first ten amendments. The first ten amendments were added to the Constitution less than three years after it became effective. The anti-Federalists would not ratify the Constitution without the guarantee of the Bill of Rights being added; the first ten amendments protect the basic rights held by Americans. Thomas Jefferson led the effort to add the Bill of Rights to the Constitution as a requirement for the support of the anti-Federalists.

SSCG7b: Define civil rights as equal protections for all people (e.g., Civil Rights Act, *Brown v. Board of Education 1954*, etc.).

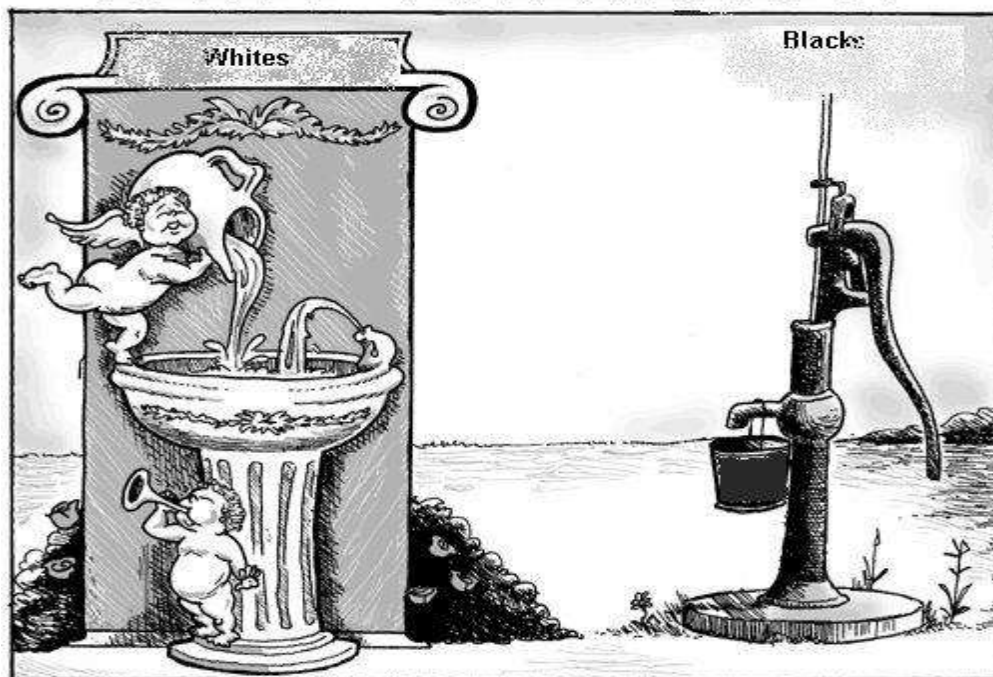
Civil rights are those positive acts of government that seek to make constitutional guarantees a reality for all people. Examples include prohibitions of discrimination on the basis of race, sex, ethnicity, religion, and sexual orientation.



The **Civil Rights Act of 1964** was a landmark piece of legislation in American history. In addition to voting rights provisions for ALL Americans, the act outlawed discrimination in a number of areas: no persons may be denied access or refused services in various public school accommodations because of race, color, religion, or national origin; the act prohibited discrimination against any person on the grounds of race, color, religion, national origin, sex, or physical disability in any program that receives federal funding; forbids employers and labor unions to discriminate against any person on grounds of race, color, religion, sex, physical disability, or age in job-related matters.

Brown v. Board of Education 1954 was a Supreme Court case that made a decision on the subject of separate but equal. The Court reversed *Plessy v. Ferguson*, which had allowed for separate but equal, and struck down laws in four states that required or allowed separate but equal educational facilities for white and African American students. The Supreme Court held that separate but equal was unconstitutional.

PLESSY VS. FERGUSON



**SEPARATE
BUT NOT EQUAL**

SSCG7c: Analyze due process of law as expressed in the 5th and 14th amendments, as understood through the process of incorporation.

The **5th amendment** guarantees certain protections relevant to criminal and civil legal proceedings, guarantees the right to a grand jury in criminal cases, protects against self-incrimination, forbids double jeopardy, requires that due process of law be a part of any proceeding that denies a citizen 'life, liberty, or property', and requires that the government compensate citizens when it takes private property for public use.

The **14th amendment** addresses many aspects of citizenship and the rights of citizens. The most commonly used phrase in the amendment is 'equal protection of the laws.'

Process of incorporation refers to the combination or merger of most of the guarantees in the Bill of Rights into the 14th amendment. The Supreme Court has held that most of the protections included in the Bill of Rights are covered in the 14th amendment's due process clause.

Double jeopardy is part of the 5th amendment which says that once a person has been charged for a crime, he or she cannot be tried again for the same crime. For example, if an individual is found innocent for a crime of murder, and later advancements in DNA technology actually prove that the person who was acquitted is actually guilty, that person cannot be tried again for that same crime.

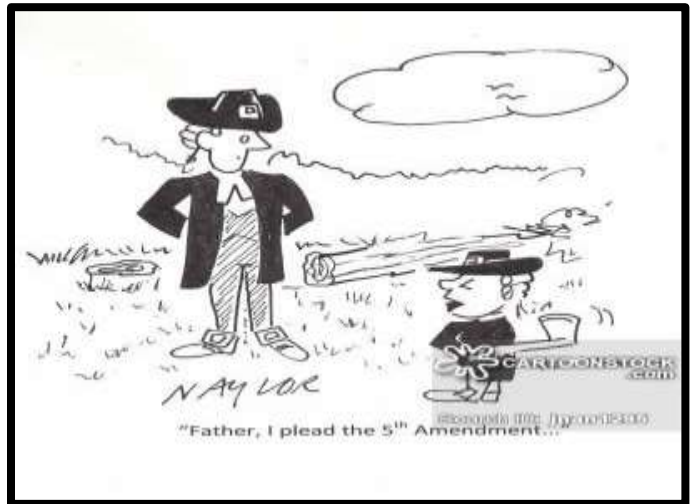
Due process of law states that the government must act fairly and in accord with established rules and laws in all that it does. In respect to the 14th amendment, the government must treat ALL citizens fairly and apply equal protection under the laws to ALL citizens.

A **grand jury** is a formal device by which a person can be accused of a serious crime. In federal cases, a grand jury consists of 16 to 23 persons drawn from the federal court district that it serves. At least 12 of the grand jury members must vote to formally charge an individual for a serious crime. It is NOT a trial.

Self-incrimination means that in a criminal case, the burden of proof is on the prosecution. The defendant does not have to testify, or be a witness, against himself or herself.

Critical Thinking Activity

Analyze the cartoon and relate it to 'pleading the 5th amendment'. A young George Washington is speaking with his father. How would you interpret what is taking place in the discussion?



SSCG7d: Identify how amendments extend the right to vote.

Each of the 4 amendments listed above in some way contributed to the right to vote.

The **15th amendment** provided the right to vote to people of color. Voting rights cannot be denied on the basis of race, color, or previous enslavement. This amendment was passed in 1870.

The **19th amendment** was passed in 1920 and gave women the right to vote.

The **24th amendment** was passed in 1964. This amendment banned poll taxes as a condition of voter qualification.

The **26th amendment** lowered the voting age to 18; this amendment was passed in 1971.