



AMERICAN
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LAW AND POLICY

*THE CONSTITUTION IN THE CLASSROOM
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WHAT IS A CONSTITUTION AND HOW DOES IT WORK?

A CONSTITUTION DAY PRIMER

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INTRODUCTION / PRELIMINARIES
“THE CONSTITUTION IN THE CLASSROOM”

The purpose of this exercise is for students to come away better informed about the role of the Constitution in our lives and some of its most important features for American government and law.

You will want to make contact with school personnel in advance – first, to get your visit authorized, and second, to get a better understanding of the class(es) you’ll be addressing. Be prepared that there may be some questions or concerns about the age-appropriateness of the material, and be flexible in deciding what’s right for your community and for the maturity of the listeners.

These lesson materials are meant to be used and adapted according to the needs and interests of the class. Don’t feel wedded to the sequence of events and don’t feel obliged to use everything.

Above all, have fun!

What is a Constitution and What is it For?

This segment is designed to give students a general overview of what a Constitution is and why it is useful. You can start by explaining generally that a Constitution is a set of rules (or laws) that describes how other rules (or laws) are made, enforced, and applied to individual people. The below example treats the classroom as its own country in order to reinforce this concept.

A. Classroom Example

Ask the students to think about their classroom as if it were its own country. Discuss how it is important to have (as they no doubt already do) a set of rules for how the classroom operates in order to make sure the class runs in an orderly and fair way.

[You can solicit an example of a school rule from the students or offer one yourself as an example, *e.g.* when classes start and end or a dress code].

1. The Constitution v. Ordinary Laws

Next you can ask the students a series of questions designed to flesh out the difference between the rules themselves and the framework for creating them. For instance:

- Where did the classroom rule you just mentioned come from, i.e. who *made* it? (The principal? Your teacher? The students? Their parents?)
- Is it important to know who is in charge of making the rules ahead of time?
 - What if you don't know who is in charge of making the rules? What could happen? [multiple sets of conflicting or inconsistent rules]
- How would you make sure that the rules are made “correctly”? [Constitution].
 - Should the Constitution be written down? Why or why not?
 - Should it be easy to change? Why or why not?
- Would next year's class have to follow the same rules? What would they have to do to change them?

2. The Constitutional Framework

You can then move to discussing the preferred type of framework with questions like:

a. The Legislature – how rules are made

- If you were allowed to pick who got to make the rules for your class, who would you choose? Why?
- How would you want those rules to be made? Would one person just say what the rules are going to be? Would there be a vote? Would everyone vote or just a small group? How many votes would you need before the rule became a rule?

b. The Executive – how rules are enforced

- Who would make sure everyone followed the rules? Would everyone be allowed to watch each other and report violations? Should a specific person or group be set up to do this? Should it be the same group that made the law in the first place? Why or why not?

[Some of the reasons you may want to offer for why enforcement should be specialized are the need for training and expertise, neutrality, and professionalism in exercising prosecutorial discretion and power.]

- Would anyone else get to check the rule after it was made to make sure it was a good idea? Why or why not?
 - If so, should it be the same group or groups that made the law? Why or why not?

c. The Judiciary – how rules are interpreted

- What if a rule was made the right way, but ends up being unclear or unfair to a student or group of students?

For example, what if there is a rule that says “students can’t leave school grounds during the school day,” but students leave campus because of a fire? Should they be punished? Who should decide?

- Who should decide what the rule means?
- Who should decide whether it is really unfair? The people who made it? Someone else? Why?
- What should they do if it really is unfair? [Strike it? Narrow it? Nothing?]

Explain that the above questions are all examples of the problems that a Constitution is designed to solve. You can repeat at this point that the Constitution generally doesn't make any specific rules (like when class will start or what the dress code will be), but instead just tells us HOW those rules will be made, enforced, and interpreted.

You can complete the classroom example by noting that while this may not seem so exciting at first, it is very important because without a plan for making rules, we wouldn't always know which rules we had to follow.

For instance, what if your teacher told you that class started at 9, but all of the students agreed separately that class should start at 10. How do we know when class starts? It depends on who is allowed to make the rules about what time class starts (the teacher, unfortunately). The Constitution is in charge of telling us who gets to make rules so it is clear which ones we have to follow.

B. The United States Constitution

Now that you have talked about the difference between a Constitution (the framework for rulemaking) and ordinary laws or rules, it is time to tie these concepts back into our actual Constitution by confirming for students that the United States has a Constitution that answers all of the above questions.

- Under our Constitution, who is in charge of making the laws? [Congress - Art I]
- How does Congress do this? [Voting]
- How many votes do you need to make a law? [More than half – a majority].
- How do we know this is the way Congress makes laws? [Constitution - Art I].

[NOTE: This may be a good time to remind the students of the finality and plenary authority of the Constitution. For instance, if the Constitution says that Congress held a checkers tournament every time they wanted to make a law and the winner got to make whatever law they wanted, that is how we would make laws. That would be a silly way to legislate, but if that is what the Constitution said, that is how Congress would have to do it, because that is what a Constitution is for - to be the final word on how government functions.]

- Who checks to see if the law Congress made is a good idea? [President - Art. II]
- How does he do this? [Veto].

So using the above example about class starting times, if Congress decided your class should start at 4 a.m., the President could veto (or “cancel”) the law (ostensibly because it is a bad idea for children and their families to have to start school in the middle of the night).

[Note – the question of veto overrides by a 2/3 majority of each house of Congress is not directly included here because it may be too advanced for some age groups or classes. That should not discourage instructors from including it in the discussion, however, if they think it would be useful.]

- Who decides what laws mean when they are unclear or whether they are too unfair to be good laws? [Judges/Courts - Art. III]

For example, if Congress passed a law that said “school starts first thing in the morning” and the President chose not to veto it (so it became the law), the courts would be in charge of deciding what “first thing in the morning” meant, because otherwise students and their parents could be very confused about how to follow the rule.

What are Some of the Most Important Features of our Constitution?

Now that we have established the basic role and function of our Constitution, it is worth exploring at least three of the basic principles of our constitutional law: the separation of powers, federalism, and the protection of individual rights.

A. Separation of Powers

1. Classroom Example

In this example, you can suggest a potential policy dilemma for their school and ask how it should best be resolved. One suggestion is the selection of a new school mascot.

To highlight the potential separation of powers issues, you can raise the initial question of who should be in charge of choosing the mascot and offer some suggestions:

- The principal?
- Your teachers?
- The students themselves?

You can then explore the advantages and disadvantages associated with each group:

- What are the advantages of each group making that choice?

Principal - One person can make the decision faster and easier. The principal is also in charge of the school, so she should have a good idea of what would be a good mascot for the whole school.

Teachers – The teachers are adults with more experience and information and are "experts" on the school but are not a single person, so they may be able to come up with more and better ideas than the principal alone. Teachers are also likely to have been around longer than students, so they are more likely to think about a mascot that will be good for the long term.

Students - The students are the largest group in the school and the one most readily identifiable with the school as an institution; without them, there is no school. Because the mascot represents the entire school, the students know best what the entire school would want.

- What are the disadvantages of each group making that choice?

Principal - One person may not be able to make the choice in a way that everyone will like; she may not know the students well enough to pick a mascot that will build school spirit the way it is supposed to. There is also the chance she will just pick something she likes because nobody can stop her (like naming the mascot after her son or daughter).

Teachers – The teachers are also not necessarily best aware of what the students would like and what would best build school (student) spirit. Since there aren't too many of them and they all know each other, there is also the chance that they will work together to pick something that only the teachers want (like the "fighting chemistry teachers"), even if they know it isn't what the students and/or principal would prefer.

Students – The students are young and inexperienced and will not be around very long to live with their choice, so they could choose a mascot (like Justin Bieber) that they think it is cool now, but that will not last very long and may not be a good choice for future students.

- After highlighting some of the above advantages and disadvantages, you can ask whether it would be better to have only one of these groups make the decision, or to have them work together with each playing different roles.
 - Why is working together better? [Because they each have their own areas of expertise, and combining these can lead to a better decision]

2. The United States Constitution

Once you have discussed the above concepts of institutional competence and the advantages of inter-branch cooperation, you can explain that this idea is called the “separation of powers” and is an important part of how the U.S. Constitution works.

You can then help draw parallels between the school mascot example and the actual Constitution. First, you may want to remind the students that under our Constitution:

- Congress makes the laws;
- Those laws are “checked” by the President to see if they are a good idea. [Veto];
- Judges “check” the work of the Congress and President by
 - Explaining what a law means when it is unclear and
 - Deciding when a law cannot be used anymore because it is “unconstitutional,” i.e. it breaks one of the Constitution’s rules for how a law should be made or what it is allowed to do.

Next, you can identify which of the groups in the mascot example (students, teachers and principal) is most closely related to the three branches of American government:

- Which group would be most like the Congress? [Students]
 - Why? [It is the largest, most representative group]
- Which person or group would be most like the President? [Principal]
 - Why? [Solo actor with the power to punish people for breaking the rules]
- Which group would be most like judges? [Teachers]
 - Why? [Experts on the rules with an equal duty to principal and students]

Finally, you can bring the exercise together by explaining that if the school mascot were chosen under the rules set out in the U.S. Constitution, the first choice would be made by the students (Congress), the principal (President) would then have to decide if she agrees (veto), and the teachers could then say no if the new mascot were such a bad decision that it was unfair to a student or a group of students (judicial review).

This way of making decisions is called the separation of powers, or checks and balances. It is an important part of the way the Constitution works and tries to make sure that better decisions are made by ensuring that no one part of government can make a decision without someone checking their work.

B. Federalism

In order to talk about federalism, a slightly different version of the school mascot example is useful to raise the following questions:

- What if each class wanted its own mascot? How is that problem different from choosing one mascot for the whole school?
- Should each class be allowed to have its own class mascot?
 - If so, should it replace the mascot for the whole school or should it be in addition to the school's mascot?
- When your school plays other schools in sports, for example, which mascot should be on the uniforms, the school mascot or the mascot from each player's own classroom?
 - What if your class played another class from your school?

Once students have had a chance to see that these questions create potentially different problems than the simple school-wide mascot issue described above, you can point out that in the United States, the power to make, enforce, and interpret laws is shared between the Federal Government (the Congress, President, and Supreme Court in Washington, D.C.), and the governments of each of the States (like the Legislature, Governor, and courts in your home state) as follows:

- In general, the Constitution says that there are a few things that are the job of the Federal Government, and when the Federal Government does those things, the States have to go along. This is called “federal supremacy” and is required by the Supremacy Clause of the Constitution.

[Put another way, if government were like a game of “rock, paper, scissors,” federal law would always win over state law.]

- Everything else is up to the States.

In light of this reality, you can show how in the classroom mascot example, if the school Constitution said that the mascot was supposed to be chosen by the whole school, then the separate classes would not be allowed to have their own because that would be the job of the school to pick a mascot, not each classroom. If it did not, then each class would be free to choose its own mascot, and all of difficult questions about how the two sets of mascots should interact would have to be answered separately.

C. Individual Rights

Finally, the concept of individual constitutional rights can be demonstrated through one last mascot example.

Suppose that there is a student in your school named Sally that everyone picked on. Suppose that every student but Sally agreed that the new mascot would be an old Halloween picture of Sally dressed up in a really embarrassing costume with the title “geek” underneath it. Suppose that the principal decided to go along with the decision (even if it meant she was being a bad principal).

- Is there anything Sally can or should be able to do?
- Is it enough that the majority of the legislature (in this case the students) and the President (in this case the principal) agree on a decision, or can they go too far?
- Does our Constitution say that there are things the Government can't do? [Yes]
 - Who decides whether they went too far? [Judges – third branch]
 - Why judges? [neutral, experts in the law]
 - What does too far mean? [Beyond what the Constitution allows]
 - Where, for example, does the Constitution tell us what is too far? [Bill of Rights]
 - Was the Bill of Rights in the original version of the Constitution? [No – first 10 amendments]
 - Can you name one of the limits in the Bill of Rights? [Free speech, etc.]

This is the last major purpose of the Constitution for today's discussion – to protect individuals from being mistreated by the Government. Like in the example of the school picking on Sally when it chose its mascot, the Constitution creates limits to make sure that, even where laws are made according to the Constitution's rules about the separation of powers and federalism, certain individual rights (like speech, privacy, etc.) are protected.

Imagine for example if Congress decided that boys and girls should take different tests in school. Even if Congress and the President thought this was a good idea and passed a law to that effect, it would not be permitted by the judiciary because it is unconstitutional; the Constitution protects the rights of individuals to be treated fairly and equally by the government, even when all of the other rules for making laws have been followed.