

ACS Constitution in the Classroom
Separation of Powers Lesson
Middle School

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Overview and Introduction:

This lesson is designed to provide middle-school students with information about, and hand-on experience with, the separation of powers. In particular, this lesson aims to review with students the basic functions of our three branches of government and the basic tools that each branch can use to check the others; and to engage students in real-life exercises related to the core separation-of-powers principles.

This topic is (obviously) quite complicated. Law students typically spend weeks studying and wrangling with it in an introductory Constitutional Law course (and much more in advanced courses). Members of Congress, Executive officials, and attorneys debate it in one form or another every single day. And scholars continue to discover and explore new nooks and crannies in the doctrine, even over 200 years after the ratification of our Constitution. Still, with all this work on the separation of powers, we haven't figured out how to measure its precise metes and bounds. (It sometimes seems like the more we learn about it, the less we know.) And amazingly, even with over 200 years of experience, new, important, unsettled, and hotly contested issues involving the separation of powers arise regularly.

This means that the separation of powers is a uniquely challenging topic to present to a middle-school class, especially within a mere 45- to 50-minute period. This means that our presentations must be simple, interactive, engaging; and our objectives and goals must be appropriate and modest.

This lesson aims to guide middle-school students through the stages of Bloom's Taxonomy—or at least as many stages as we might reasonably achieve in a brief, single session. (If you're not familiar with Bloom's Taxonomy, you can readily find excellent summaries and resources online.) In short, this means that the lesson aims to guide students through *remembering*, *understanding*, *applying*, *analyzing*, *evaluating*, and *creating*—in that order—based on the material. While you may not be able to take students through each of these stages in your brief time with them, you should be able to get through the first three stages, and provide them with a challenging exercise toward the end of class that is designed to *analyze*, *evaluate*, and *create*.

The activities and exercises below, and the times assigned to them, are a suggestive guide, and not a rigid agenda. You should adjust them to your own classroom, your own students, and your own teaching style. But one word of caution: Given the complexity of the material, there is a strong, built-in incentive to use a lecture format in order to deliver the material quickly and efficiently. But try to avoid over-reliance on lecture. Instead, try to use questions to engage the students and gently guide them to the material you wish to deliver. (A good measure of student

engagement is the amount of time *you* talk in comparison to the amount of time *they* talk: they should talk more than you.)

Above all: Have fun! You'll create a more memorable experience for your students if you and your students enjoy it. And the more memorable the experience, the more they'll remember of the experience—and the separation-of-powers principles that you share with them.

Objectives:

This lesson has four principal objectives:

1. To review the basic separation-of-powers and checks-and-balances *structure* in the United States Constitution.
2. To review the principal *reasons* for the separation of powers and checks and balances in our Constitution.
3. To examine arguments about the separation of powers and checks and balances in an actual, highly contested policy area.
4. To use separation-of-powers and checks-and-balances principles to improve policy in an actual, highly contested policy area.

Take-Aways:

By the end of the lesson, students should be able to do the following:

1. Explain in plain and basic language how the separation of powers works; the ways in which the three branches of government can check each other; and why the separation of powers and checks and balances are important.
2. Apply separation-of-power and checks-and-balances principles to important matters of public policy, and make appropriate arguments about (1) the substantive policy and (2) which branch of government should get to decide.
3. Analyze how the separation of powers and checks and balances might be used to change policy.

Materials:

1. Chalkboard, white board, or flip chart—something to write on that all students can see.
2. Chalk or markers.

3. Handouts for each student. (The handouts are attached and labeled as “Handout 1,” etc.) Bring one handout for each student, and a few extras, just in case.

Introduction (3 to 5 minutes):

- I. Introduce yourself and provide some (brief) background on your professional experience.
- II. Say briefly why you are teaching today: to share some information about our Constitution and how it works.
- III. Ask students briefly about their own experiences with the law or the Constitution, e.g.:
 - A. Raise your hand if you know a lawyer. Ask one or more of the students: Who? How did you meet her or him? What does she or he do?
 - B. Who can tell me a fact about the Constitution? Who can tell me something that is in the Constitution? Who can tell me where they've seen the Constitution referenced in the news?
- IV. State briefly that the lesson today will review the separation of powers and apply separation-of-powers principles to a hotly contested issue in public policy and at the Supreme Court.

Exercise 1: Review of Separation-of-Powers Principles (10 minutes):

This Exercise is designed to review basic separation-of-powers and checks-and-balances principles. It assumes that your students have had some instruction on the separation of powers. (If this proves wrong, you may have to deliver some of the information by lecture.) This Exercise goes to *remembering* and *understanding* in Bloom's Taxonomy.

Option 1: Large-Class Discussion

- I. Ask the class if they can name a branch of government. Write the three branches across the top of the chalkboard, white-board, or flip-chart, and draw lines to create three columns.
- II. For each branch—legislative (Congress); executive (the president); judicial (the courts)—ask the students what they do? List one, two, or three core functions of each branch in the column for that branch, and ask a student to explain what each function means.

- III. For each branch, ask the students how they can check the other branches. Draw arrows from column to column to represent these checks. Ask a student to explain what each check means and how it works.
- IV. Ask the class why it's important to have three branches of government, with different jobs, and with different ways to check each other. (You can use a think-pair-share format for this question, if appropriate. This requires each student individually to think about her or his answer; to find a partner; and to share her or his answer with a partner.) Answer: This keeps power from concentrating in the hands of just one person or a few, and thus avoid tyranny.

Option 2: Small Group Work

- I. Ask the whole class to identify the three branches of government. Write these on the chalkboard, white-board, or flip-chart, as above.
- II. Divide the class into three groups. (Use natural divisions in the classroom, or ask students to count off (one, two, three) to set-up the groups.) Assign one branch of government to each group.
- III. Ask each group to identify one, two, or three core functions of their assigned branch of government, and one, two, or three ways that their branch can check one or more of the other branches of government.
- IV. Ask each group to report out to the entire class. Record the responses, as above, on the chalkboard, white-board, or flip-chart.
- V. Ask the entire class why it's important to have three branches of government, with different jobs, and with different ways to check each other. (You can use a think-pair-share format for this question, if appropriate. This requires each student individually to think about her or his answer; to find a partner; and to share her or his answer with a partner.) Answer: This keeps power from concentrating in the hands of just one person or a few, and thus avoid tyranny.

Exercise 2: President Trump's Travel Restrictions (20-25 minutes)

This Exercise challenges students to apply separation-of-powers and checks-and-balances principles, and ordinary principles of statutory construction and legal and policy argumentation, to a difficult and hotly contested area of public policy, President Trump's travel ban. It goes to *applying*, *analyzing*, and even *evaluating* in Bloom's Taxonomy.

- I. Tell students that they will now apply these principles to President Trump’s travel ban, to analyze whether President Trump’s action comports with the separation of powers and the law.
- II. Divide the class into four groups, and ask students to congregate in their assigned group. (Divide students based on natural class divisions, or have students count off (“One, two, three, four”).) Assign one group to represent the executive (President Trump); one group to represent Congress; one group to represent civil society (organizations and individuals who are acting in the public interest); and one group to represent the states. (The “states” group adds an element of federalism to the problem. You need not include a “states” group, however; the exercise works perfectly well without it (and with just three groups). If your class is larger than 24 students, or if you wish to include a discussion of federalism in this lesson, I recommend that you assign a “states” group. If not, use your discretion.) Divide the groups for Congress, the states (if applicable), and civil society each into two sub-groups, one “pro” Proclamation, the other “con” Proclamation. (You need not divide the executive group, because it will only have one position, “pro” Proclamation.)
- III. Distribute Handout 1, “Summary of President Trump’s Travel-Ban Proclamation.” Tell students that this is President Trump’s travel ban, which President Trump issued by executive order. Indicate that this is an executive action by so illustrating on the three-part diagram already on the whiteboard or chalkboard from the earlier exercise. (For example, write “EO” or “Travel Ban” in the Article II Executive column on the board.) Read this aloud, as students follow along silently. Ask if there are any questions. (Depending on the time, you may also ask if students have heard about this in the news, what they think about it, etc.)
- IV. Distribute Handout 2, “Relevant Statutory Provisions.” Tell students that Congress enacted these provisions. Indicate that these are a congressional action by so illustrating on the three-part diagram already on the whiteboard or chalkboard. (For example, write “INA” or some such in Article I Legislative column.) Read this aloud, as student follow along silently.
- V. Instruct students to discuss and debate whether President Trump’s Travel-Ban Proclamation comports with the law, from their policy assignment (“pro” or “con” Proclamation, if applicable). In particular, instruct them to consider (1) the statutory language, (2) the Proclamation’s language and effects, and (3) their assigned policy position (“pro” or “con” Proclamation, if applicable). Briefly remind the students of their institutional roles, and the significance of their institutional roles within a separation-of-powers framework (from above, from Exercise 1). Briefly instruct the state groups that their interests are in the welfare of their state citizens, residents, and corporations (however they define those things, depending on their “pro” or “con” assignment). Briefly instruct the civil society groups that their interests are in

protecting individual rights, economic opportunities, and security (again, however they define those things, depending on their “pro” or “con” assignment).

- VI. Ask a representative of each group to report out to the entire class on their arguments. (If time permits, you may wish to structure this as a debate, allowing groups to respond to each other.) As the groups report out (or debate), note their substantive arguments. In particular, note how their arguments align with their policy assignments (“pro” or “con” Proclamation). Refer to your three-part separation-of-powers diagram already on the board. (Most of the students’ arguments will likely only parse the statutes. But some groups may include arguments related to their assigned institutional interests. For example, the congressional group that opposes the Proclamation may say that this kind of policy really is a matter for the lawmakers, not the executive branch. The civil society group that opposes the Proclamation may say the same thing, or that this is really a matter for the courts. If the groups do not state arguments that identify their institutional interests, you may wish to prompt them through questions during their reports-out.)
- VII. Summarize the students’ substantive arguments and institutional arguments. Note how the institutional arguments relate to the separation-of-powers principles you introduced in Exercise 1, earlier.

Exercise 3: Supreme Court Vacancy (15-20 minutes)

This exercise is designed to showcase the importance of the separation of powers on a current issue. It will ask the students to think critically and make a well-informed decision while having them participate in a real constitutional process.

- I. Read this section to your students to give them context for the importance of this exercise.
 - a. “The Supreme Court of the United States makes the final decisions on whether laws are constitutional or not. If the Supreme Court decides a law is not constitutional, as it did with segregation in *Brown v. Board*, the law cannot be enforced. Congress can try to change a law to make it constitutional if the Supreme Court rules against it. The Supreme Court only hears about 70 cases per year, but its rulings apply to everyone living in the U.S.”
- II. There are two options here: You may assign one student to be the president and have them choose 2-5 other students to be their advisors, thus forming the executive branch. OR You may assign 3-6 students to be the executive and have them choose one student among them to be the President, who will speak for the group.

- III. Have the executive group choose one student in the class to be the Supreme Court justice nominee. They should have three clear reasons why this person should be nominated, write these down on the board. Reasons can range from “they are my best friend” to “they are trustworthy and fair”. These reasons will help the judiciary committee and the legislature make their decision.
- IV. The rest of the class will act as the legislative branch. Pull 3-5 students to act as the Senate Judiciary Committee, then divide the rest of the class between pro-nominee and anti-nominee, senators.
- V. At this time the Senate Judiciary Committee can begin to question the candidate about what would make them a great Supreme Court justice. Remember this position is a part of the branch of government responsible for interpreting our laws. The Supreme Court is particularly important because the 9 justices of the Supreme Court of the United States make the legal decisions when the US government is involved in the the legal case.
- VI. Prompt the legislators to give questions to the Judiciary Committee that they can ask the nominee during the ‘hearing’. “Remember that Justices for the Supreme Court of the United States must be fair and impartial. If you want the nominee to become a justice, think about what questions you can ask that would show how fair the nominee is. If you are against this nomination, think about what questions you can ask that would show how unfair or biased this nominee is. Remember the 3 reasons that the executive originally stated as to why this nominee was chosen. Are those good reasons?” Remind your class to be kind in their questioning.
- VII. Have the legislators vote. There must be a simple majority for the nominee to be confirmed.

Closing (5 minutes)

Ask your students to write down what they could do, as a citizen, about the travel ban—to oppose it, to support it, or to change it. Which branch of government would be of most help to them in achieving their objective? If time permits, ask for volunteers to share their responses. Remind the students that the best way to keep our constitutional values strong is to participate in our democracy through voting. If they want to learn more about their state they can visit our website <https://acslaw.org/Pre-RegistertoVoteNow>. Thank your students and the teacher.

Handout 1

Summary of President Trump's Travel-Ban Proclamation

1. On September 15, 2017, the Secretary of the Department of Homeland Security gave a report to the President. The report was based on the Secretary's worldwide investigation into how well other countries screened their citizens for terrorist connections and shared that information with the United States. The report recommended restricting entry to the United States by citizens of eight countries: Chad, Iran, Libya, North Korea, Syria, Venezuela, Yemen, and Somalia. The report said that the first seven countries were "inadequate" in providing information about their citizens to the United States to determine whether their citizens were connected to terrorists. The report said that the eighth country, Somalia, had other risk factors regarding terrorism.
2. On September 24, 2017, President Trump issued the Proclamation, also called the travel ban. The Proclamation declares that the entry of certain foreign nationals from the eight countries listed above "would be detrimental to the interests of the United States." The proclamation imposes tailored restrictions on entry to the United States by nationals of those countries.
3. The Proclamation provides for exceptions when a citizen of one of those eight countries can demonstrate undue hardship and that his or her entry would not pose a threat to national security or public safety and would be in the public interest.
4. The Proclamation requires executive agencies (like the Department of Homeland Security) to continually assess whether travel restrictions should be continued or modified, and to report to the President any recommended changes every 180 days.
5. The Proclamation is the third version of President Trump's travel ban. The two earlier versions were halted in the courts, because they were illegal or unconstitutional or both. Some of the countries in the Proclamation are different than some of the countries in the earlier versions; the earlier versions were not based on a worldwide investigation; and the earlier versions provided for a temporary ban, not a permanent ban.

Handout 2
Summary of Applicable Law
Immigration and Naturalization Act

8 U.S.C. § 1182(f). This section allows the President to “suspend the entry” into the United States of non-citizens, for as long as the President “shall deem necessary,” if the President “finds” that the entry of those non-citizens would be “detrimental to the interests of the United States.” The section also allows the President to impose restrictions on the entry of non-citizens under the same circumstances.

The section does not specifically say whether the President can ban the entry of non-citizens permanently. The section does not define what it means for the President to “find” that entry would be “detrimental to the interests of the United States.” The section does not say what “detrimental to the interests of the United States” means.

8 U.S.C. § 1185(a)(1). This section says that non-citizens cannot come to the United States, except under “reasonable” rules set by the President.

The section does not say what “reasonable” means.

8 U.S.C. § 1152(a)(1)(A). This section prohibits the government from discriminating by nationality in granting visas.

A visa is an official permit that a non-citizen may obtain, if she or he meets certain qualifications, to come to the United States.