

AP[®]

 CollegeBoard

ANALYTICAL READING ACTIVITIES
Topic 1.6–Teacher Version

AP United States Government and Politics

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Plan

Analytical Reading

Students will read and analyze the following:

- **Required Reading:** Excerpts from *The Federalist No. 51*
- **Paired With:** Excerpts from the majority opinion in *Clinton v. City of New York* (1998)

In this lesson, students will study:

Enduring Understanding PMI-1: The Constitution created a competitive policy-making process to ensure the people's will is represented and that freedom is preserved.

To be able to:

Learning Objective PMI-1.A: Explain the constitutional principles of separation of powers and checks and balances.

Building Understanding

The text set continues the conversation about the allocation and distribution of power in the national government under the then-proposed Constitution.

Now the emphasis is on the design features of the Constitution that were intended to restrain power and, by extension, preserve individual freedoms.

This lesson provides more practice in reading the Federalist Papers but with an emphasis on the Big Idea of Competing Policy-Making Interests as reflected in the Constitution's design.

Disciplinary Practice:
Source Analysis Explain how the author's argument or perspective relates to political principles, institutions, processes, policies, and behaviors.

Reasoning Process:
Definition Describe the assumptions and/or reasoning of a source or author.

Developing the Disciplinary Practices

The Disciplinary Practice in this lesson asks students to not only identify Madison's claim and evidence, but to apply his argument to political concepts.

A useful way to have students make these connections is to have them read both documents through the lens of how the principle of separation of powers works in our government today.

The opinion in *Clinton v. City of New York* (1998) gives students an opportunity to see separation of powers in action in a case where all three branches serve as political actors. Students should analyze Justice Stevens' argument in the same way they examined Madison's argument in Federalist 51—with a goal of how they both relate to political principles, institutions, processes, policies, and behaviors.

Topic 1.6: Principles of American Government

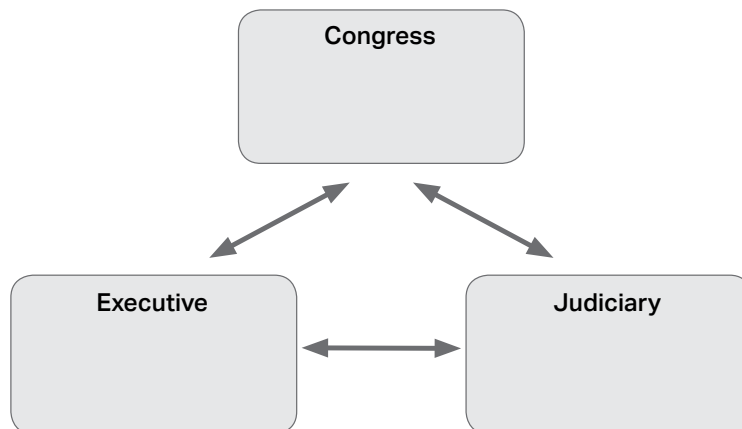
Source Analysis

Before You Read

In moving from the Articles of Confederation to the Constitution, newly created powers for the national government did present concerns for those Americans fearful of concentrated power.

In *Federalist No. 51*, Madison argued that separation of powers among three branches of government and a system of checks and balances would ensure that no one person or group of people would dominate the national government.

Before you read *Federalist No. 51*, use the graphic below to list what you already know about the ways in which each of the three branches of our federal government serves as a check on the others.



Required Document: Excerpts from The Federalist No. 51 by James Madison

Paired with: Excerpts from Majority Opinion from Clinton v. City of New York

Related Concepts:

- Madisonian Model of Government
- Separation of Powers
- Checks and Balances
- Veto Power
- Judicial Review

Definition

Describe the assumptions and/or reasoning of a source or author.

Source Analysis

Explain how the author's argument or perspective relates to political principles, institutions, processes, policies, and behaviors.

The Federalist No. 51

In *Federalist No. 51*, James Madison explains and attempts to persuade the reader that the underlying principles of the then proposed Constitution would provide safeguards against abuse of power. In fact, these ideas of separation of powers, checks and balances, and federalism were contained in the Virginia Plan as penned by Madison himself. Political scientists refer to the manner in which our government is structured into three branches of government as the “Madisonian Model.”

From the New York Packet.

Friday, February 8, 1788.

Author: James Madison

To the People of the State of New York:

TO WHAT expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

Responses should include how to divide the powers of the government that will work together to help control each other (“be the means of keeping each other in their proper places”).

partition: division

Check Your Understanding

Use the space below the paragraph to summarize what Madison is saying in your own words.

Check Your Understanding

Why does Madison claim this document is being written?

*This document was written to
persuade the people of New
York to ratify, or formally
approve, the Constitution.*

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. ...

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government.

But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

Check Your Understanding

What “foundation” is Madison laying here?

Look for students to identify the idea that Madison is laying a foundation for the separation of powers among the three branches (departments) of government.

Source Analysis

Highlight or underline what Madison claims is necessary for liberty to be maintained.

Connect to Content

Compare Madison’s argument in this paragraph to our government today. How do the branches resist being controlled by another?

Answers will vary. Look for students to identify checks branches have on each other and how they are exercised to limit the power of the other branches.

Source Analysis

Highlight or underline Madison’s claim about human nature in this passage.

Source Analysis

How is this view connected to his theory that checks and balances are necessary to avoid a concentration of power?

Madison sees it as human nature to increase one’s power. If that is true, then there must be safeguards to protect against a person or group from seizing too much power.

A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. ...

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions.

As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe nor alone sufficient. On ordinary occasions it might not be exerted with the requisite firmness, and on extraordinary occasions it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connection between this weaker department and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department?

Check Your Understanding

What is the chief check on governmental power? According to Madison, is this chief check adequate?

The people are the chief check on power. However, Madison does not think that alone is sufficient to prevent power from being concentrated in the hands of a few.

Source Analysis

Circle which branch is the most powerful in a republic, according to Madison.

Connect to Content

How does the Constitution address this concentration of power in Congress?

The Constitution divides Congress into two chambers with different methods of election (originally, Senators were selected by state legislatures until the 17th amendment) and some different powers.

Connect to Content

Relate Madison's argument about the power of the president relative to Congress to current political behavior.

Answers will vary depending on the student's perception of the current balance of power between Congress and the President. Students should, however, note that Madison asserted that the President would be significantly (Continued)

*weaker than Congress. In this
passage, he is discussing the
"fortification" of presidential
power through the granting of
the veto to the President by the
Constitution.*

After You Read

Thinking Like a Political Scientist

Reasoning Process: Definition

What is Madison's reasoning for separation of powers and checks and balances?

Madison believes that both separation of powers and checks and balances are necessary to prevent any one branch of government from dominating the other two. Concentration of power in a single person or group is a threat to the liberty of the people.

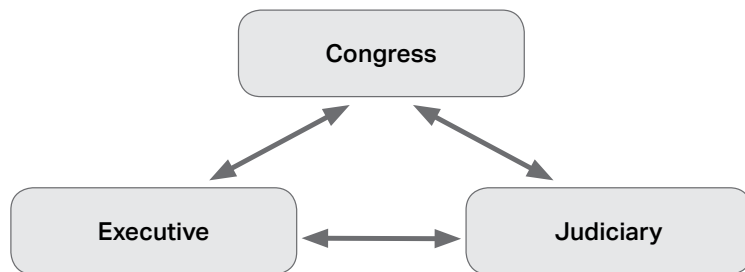
What does Madison assume about the nature of people that makes the system of checks and balances necessary?

Madison assumes that men cannot be trusted with unchecked power.

Political Science Disciplinary Practices

Source Analysis

Using the same diagram from the Before You Read, connect Madison's outline of separation of powers to one way in which the system works and one issue that may cause the system to break down in our government today.



Ways the system works

Congress: *Makes law*

Executive: *Enforces the law*

Judiciary: *Interprets the law*

What may cause the system to break down

Congress: *Answers may vary, but should indicate when one branch takes*

Executive: *over the duties of another or when a branch cedes their duties*

Judiciary: *or responsibilities to another.*

Clinton v. City of New York (1998)

Since the inception of the Constitution, battles over how power should be distributed among the legislative, executive, and judicial branches have been a central part of our national conversation. In the case, *Clinton v. City of New York* (1998), the Supreme Court, exercising its own powers under judicial review, considered a unique question: Does a power granted to the president by Congress violate the Constitution?

Central to the question for the Court was the meaning of the Presentment Clause in Article I, Section 7.

As you read excerpts from the majority opinion, look for the four elements of any Supreme Court decision that will support your efforts to uncover how the rationale of the majority opinion relates to the political principles underlying our policymaking institutions of government.

SUPREME COURT OF THE UNITED STATES

WILLIAM J. CLINTON, PRESIDENT OF THE UNITED STATES, et al.,
APPELLANTS v. CITY OF

NEW YORK et al.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Justice Stevens delivered the opinion of the Court.

The Line Item Veto Act (Act) . . . was enacted in April 1996 and became effective on January 1, 1997. . .

. . . the President exercised his authority to cancel one provision in the Balanced Budget Act of 1997 . . . and two provisions in the Taxpayer Relief Act of 1997 . . .

Appellees, claiming that they had been injured by two of those cancellations, filed these cases in the District Court. That Court again held the statute invalid . . . and we again expedited our review . . .

Check Your Understanding

How is the Line Item Veto Act connected to President Clinton's actions in the Balanced Budget Act (1997) and the Tax Payer Relief Act of 1997?

The Line Item Veto Act

authorized his cancellation of

provisions in the Balanced Budget

Act and the Tax Payer Relief Act

Academic Vocabulary

Use context clues and what you know about the role and function of the Supreme Court to define *appellees* and *statute*.

We now hold that these appellees have standing to challenge the constitutionality of the Act and, reaching the merits, we agree that the cancellation procedures set forth in the Act violate the Presentment Clause, Art. I, §7, cl. 2, of the Constitution.

On the merits, the District Court held that the cancellations did not conform to the constitutionally mandated procedures for the enactment or repeal of laws in two respects.

First, the laws that resulted after the cancellations “were different from those consented to by both Houses of Congress.” ...

Moreover, the President violated Article I “when he unilaterally canceled provisions of duly enacted statutes.” As a separate basis for its decision, the District Court also held that the Act “impermissibly disrupts the balance of powers among the three branches of government.” Ibid. ,,,

IV

The Line Item Veto Act gives the President the power to “cancel in whole” three types of provisions that have been signed into law: “(1) any dollar amount of discretionary budget authority; (2) any item of new direct spending; or (3) any limited tax benefit.” It is undisputed that the New York case involves an “item of new direct spending” and that the Snake River case involves a “limited tax benefit” as those terms are defined in the Act. It is also undisputed that each of those provisions had been signed into law pursuant to Article I, §7, of the Constitution before it was canceled.

Academic Vocabulary

What does it mean to have “standing” to challenge an issue in the courts?

To have standing in a case means that you can bring a case to the Court because you have experienced some harm. In this case, the City of New York had funding cut, and therefore, had standing to bring this lawsuit against the administration.

Source Analysis

Circle the two reasons the District Court found the line-item veto unconstitutional.

Check Your Understanding

What were the requirements that the president had to meet to conform to the Line Item Veto Act?

A voiding of a line-item in a bill must be one of three types of provisions of law: (1) any spending that is discretionary (not required or mandatory spending); (2) an item of new spending; (3) any limited tax benefit (targets a small number of people or organizations). Additionally, he had to determine that it would reduce the deficit while not impairing “any essential Government functions,” and would not be detrimental to the interests of the nation. He also had to send a message to Congress within 5 days informing it of any exercise of the line-item veto.

The Act requires the President to adhere to precise procedures whenever he exercises his cancellation authority. In identifying items for cancellation he must consider the legislative history, the purposes, and other relevant information about the items. He must determine, with respect to each cancellation, that it will “(i) reduce the Federal budget deficit; (ii) not impair any essential Government functions; and (iii) not harm the national interest.” Moreover, he must transmit a special message to Congress notifying it of each cancellation within five calendar days (excluding Sundays) after the enactment of the canceled provision. It is undisputed that the President meticulously followed these procedures in these cases...

Thus, under the plain text of the statute, the two actions of the President that are challenged in these cases prevented one section of the Balanced Budget Act of 1997 and one section of the Taxpayer Relief Act of 1997 “from having legal force or effect.” The remaining provisions of those statutes, with the exception of the second canceled item in the latter, continue to have the same force and effect as they had when signed into law.

In both legal and practical effect, the President has amended two Acts of Congress by repealing a portion of each. “[R]epeal of statutes, no less than enactment, must conform with Art. I.” There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes.

Both Article I and Article II assign responsibilities to the President that directly relate to the lawmaking process, but neither addresses the issue presented by these cases.

Check Your Understanding

Explain whether President Clinton followed the procedures as laid out in the law.

He did as evidenced by the line in the majority decision that “It is undisputed that the President meticulously followed these procedures in these cases..”

Source Analysis

What does the Court find was the effect of President Clinton’s actions?

The Court found that in exercising the line-item veto that the effect was that the President amended the two bills by repealing (cancelling out) parts of each.

The President “shall from time to time give to the Congress Information on the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient” Thus, he may initiate and influence legislative proposals.

Moreover, after a bill has passed both Houses of Congress, but “before it become[s] a Law,” it must be presented to the President. If he approves it, “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.” His “return” of a bill, which is usually described as a “veto,” is subject to being overridden by a two-thirds vote in each House.

Check Your Understanding

Circle the sections of the Constitution that outline how the President can affect the lawmaking process.

Connect to Content

According to the Constitution, how can the President affect the lawmaking process?

*The President can recommend
legislation and he or she can sign a
bill into law or veto it.*

There are important differences between the President's "return" of a bill pursuant to Article I, §7, and the exercise of the President's cancellation authority pursuant to the Line Item Veto Act. The constitutional return takes place before the bill becomes law; the statutory cancellation occurs after the bill becomes law. The constitutional return is of the entire bill; the statutory cancellation is of only a part. Although the Constitution expressly authorizes the President to play a role in the process of enacting statutes, it is silent on the subject of unilateral Presidential action that either repeals or amends parts of duly enacted statutes.

statute - law

statutory - adjective form of law; lawful - "The statutory cancellation" refers to the action that President Clinton took that was lawful or authorized under the Line Item Veto Act.

Source Analysis

What are the differences between the actions that the Constitution authorizes the president to do and what the Line Item Veto Act allowed?

The Constitution allows the President to veto a law and return ALL of it back to Congress with a list of objections. This happens BEFORE a bill can become law. However, the Line-Item Veto Act gave the president the unconstitutional power to remove part of an act after it becomes law. The Constitution does not say anything about the Presidential authority to change a bill and then sign it into law.

Academic Vocabulary

Take what you know about the word *statute* and define the term *statutory* in the space below the paragraph where the word first appears.

There are powerful reasons for construing constitutional silence on this profoundly important issue as equivalent to an express prohibition. The procedures governing the enactment of statutes set forth in the text of Article I were the product of the great debates and compromises that produced the Constitution itself.... Our first President understood the text of the Presentment Clause as requiring that he either “approve all the parts of a Bill, or reject it in toto.” What has emerged in these cases from the President’s exercise of his statutory cancellation powers, however, are truncated versions of two bills that passed both Houses of Congress. They are not the product of the “finely wrought” procedure that the Framers designed....

Source Analysis

Circle the sentence or phrase that explains how the Court interpreted the Constitution’s silence on the issue of whether the president can veto parts of a bill.

Check Your Understanding

What remarks does the Court offer regarding the Framers’ intentions?

The Court's opinion states that lawmaking process is Article I was the result of much "debate and compromise." The procedure was spelled out in Article I reflecting the important work the Convention did on this issue. President Washington interpreted the Presentment Clause as meaning that the President can accept or veto a bill in total.

construing: understanding or explaining

truncated: cut short

Although they are implicit in what we have already written, the profound importance of these cases makes it appropriate to emphasize three points.

First, we express no opinion about the wisdom of the procedures authorized by the Line Item Veto Act. ...

Second, although appellees challenge the validity of the Act on alternative grounds, the only issue we address concerns the “finely wrought” procedure commanded by the Constitution. ... Thus, because we conclude that the Act’s cancellation provisions violate Article I, §7, of the Constitution, we find it unnecessary to consider the District Court’s alternative holding that the Act “impermissibly disrupts the balance of powers among the three branches of government.”

Third, our decision rests on the narrow ground that the procedures authorized by the Line Item Veto Act are not authorized by the Constitution ... if the Line Item Veto Act were valid, it would authorize the President to create a different law—one whose text was not voted on by either House of Congress or presented to the President for signature. Something that might be known as “Public Law 105—33 as modified by the President” may or may not be desirable, but it is surely not a document that may “become a law” pursuant to the procedures designed by the Framers of Article I, §7, of the Constitution.

If there is to be a new procedure in which the President will play a different role in determining the final text of what may “become a law,” such change must come not by legislation but through the amendment procedures set forth in Article V of the Constitution.

The judgment of the District Court is affirmed.

Source Analysis

Describe the three reasons why the majority upheld (affirmed) the judgment of the District Court.

The Court did not weigh in on whether the procedures allowed by the Act were wise or good policy. The Court is only addressing the issue of whether the Act is constitutional, not on the other issue raised by the City of New York and other appellees that the law upsets the balance of powers between the branches of government. The law is unconstitutional under Article I, Section 7.

Check Your Understanding

What would be necessary for a line-item veto to be constitutional?

The Constitution would have to be amended to allow it.

After You Read

Thinking Like a Political Scientist

Reasoning Process: Definition

How did the Court's understanding of the Presentment Clause and the president's role in lawmaking inform the decision in this case?

Look for students to discuss the presentment clause and the absence of any such power (line item veto) in the Constitution. Students may also refer to Stevens' historical reference that our first president understood that Article I, Section 7 required him to approve or veto bills in total. This places presidential behavior in close proximity to the Convention and makes clearer the intentions of the founders regarding the role of the President in lawmaking.

How do this case and the constitutional questions it presents reflect Madison's arguments in *Federalist No. 51*?

Look for answers that include the following: Federalist 51 is concerned with separation of powers and checks and balances. The case, in and of itself, is an example of the Court exercising the power of judicial review. The decision of the Court restrains the power of Congress to grant the President a power not allowed under the Constitution. Students may remark that even when one branch seeks to empower another branch, the Constitutional design (Madisonian Model) acts to prevent a concentration of power.

Political Science Disciplinary Practices

Source Analysis

On what basis does the Court support its holding in *Clinton v. City of New York* (1998)?

Look for students to discuss the interpretation of the Presentment Clause as the basis of the holding in Clinton v. City of New York. Stevens, in writing the opinion, compares the Court's understanding of the meaning both explicitly from the text of the clause and in its historical context/practice.

How did the Court's decision limit the veto power of the president?

The Court's decision voided an expansion of the President's veto power as authorized under the Line Item Veto Act. Under that act, the president could alter certain kinds of legislation that had already passed the House and the Senate. He could unilaterally change a bill and then sign it into law. The decision found that exercise of power to violate the Constitution.

Making Connections

In *Federalist No. 51*, Madison claims that the legislative branch in a republic is naturally the most powerful and that the executive is weaker. Is this true today? Which branch of government would you assert is most powerful in the modern era? Explain.

Answers may vary but look for students to provide supporting evidence for any claim they make.

In his concurring opinion in *Clinton v. City of New York* (1998), Justice Anthony Kennedy considered the broader question that the majority opinion avoided. He stated:

“Separation of powers helps to ensure the ability of each branch to be vigorous in asserting its proper authority ... By increasing the power of the President beyond what the Framers envisioned, the statute compromises the political liberty of our citizens, liberty which the separation of powers seeks to secure.”

Who makes the stronger argument, the majority or Kennedy? Explain whether the Court was doing its duty in this case (interpreting the law), or overstepping by striking down a law passed by Congress.

Answers may vary but students should demonstrate an understanding of this case in making this argument in the defense of their assertions about how broadly or narrowly the case should have been decided.
