The History of the US Supreme Court, 1787–1937

The Supreme Court building in Washington DC (The Carol Highsmith Archive. Library of Congress.)

THE GILDER LEHRMAN INSTITUTE of AMERICAN HISTORY

TL TH TEACHING LITERACY THROUGH HISTORY

CONTENTS

The History of the US Supreme Court, 1787–1937

BY CHRISTOPHER GILL and TIM BAILEY (created in 2015, revised in 2023)

Christopher Gill has taught middle school in New York State since 2005. Tim Bailey taught middle school and elementary school in Utah for over two decades. Named the 2009 National History Teacher of the Year, he is the Gilder Lehrman Institute's director of curriculum development and instructional design.

GRADE LEVELS: 7–12

TIME FOR COMPLETION: Five or six 45-minute periods

UNIT OVERVIEW

This unit is one of the Gilder Lehrman Institute's Teaching Literacy through History™ (TLTH) resources, designed to align with the Common Core State Standards. Students will learn and practice skills that will help them analyze, assess, and develop knowledgeable and well-reasoned points of view on primary and secondary source materials. These skills will enable students to understand, summarize, and evaluate documents of historical significance.

The five lessons in this unit illuminate pivotal moments in the US Supreme Court's history from 1787 to 1937. Students will sift through commentary on the Court provided by politicians, judges, and the American public. Students' understanding will be assessed through a mock interview of a US Supreme Court nominee.

Students will be able to

- Understand and summarize key points of a secondary source
- Analyze primary sources and explain their authors' arguments
- Explain how American government has changed (e.g., the Supreme Court's authority, domain, composition)
- Explain technical terms (e.g., judicial review, standing, court packing)
- Collaborate effectively with classmates
- Demonstrate oral communication skills

ESSENTIAL QUESTIONS

- What powers did the US Constitution assign to the US Supreme Court?
- What is the origin of judicial review, and why is it significant?
- How have American politicians defined and patrolled the Supreme Court's authority?

COMMON CORE STANDARDS

CCSS.ELA-Literacy.RL.7.1 Cite several pieces of textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text.

CCSS.ELA-Literacy.RL.7.2 Determine a theme or central idea of a text and analyze its development over the course of the text; provide an objective summary of the text.

CCSS.ELA-Literacy.RH.6-8.1 Cite specific textual evidence to support analysis of primary and secondary sources.

CCSS.ELA-Literacy.RH.6-8.2 Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.

CCSS.ELA-Literacy.RH.11-12.1 Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

CCSS.ELA-Literacy.RH.11-12.2 Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

CCSS.ELA-Literacy.RH.11-12.7 Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.

CCSS.ELA-Literacy.RH.11-12.8 Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.

CCSS.ELA-Literacy.RH.11-12.9 Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

MATERIALS

- Source 1: Historical Background: "A Brief History of the US Supreme Court" by Bruce Allen Murphy, Fred Morgan Kirby Professor of Civil Rights, Lafayette College
- Activity Sheet 1: Understanding a Scholarly Essay
- Activity Sheet 2: Analyzing Federalist No. 78 (1788), with an excerpt from [Alexander Hamilton], "A View of the Constitution of the Judicial Department, in Relation to the Tenure of Good Behaviour," *The Federalist: A Collection of Essays, Written in Favour of the New Constitution, as Agreed upon by the Federal Convention, September 17, 1787*, vol. 2 (New York, 1788), p. 291, The Gilder Lehrman Institute of American History, GLC01551
- Activity Sheet 3: Analyzing Article III of the US Constitution (1787), *100 Milestone Documents*, Our Documents, National Archives, ourdocuments.gov
- Source 2: Chief Justice John Marshall's Majority Opinion (1803), with an excerpt from *Marbury* v. *Madison*, 5 U.S. 137 (1803), Law Library of Congress, loc.gov/item/usrep005137/
- Activity Sheet 4: Summarizing Chief Justice Marshall on *Marbury v. Madison*
- Source 3: *Dred Scott v. Sandford* (1857) with an excerpt from the Statement of the Case, *Dred Scott v. Sandford*, 60 U.S. 393 (1856), Law Library of Congress, loc.gov/item/usrep060393a/
- Activity Sheet 5: Critical Thinking Questions about *Dred Scott v. Sandford*
- Source 4: Abraham Lincoln's Speech on the *Dred Scott* Decision (1857), excerpted from Abraham Lincoln, Speech at Springfield, Illinois, June 26, 1857, in *The Collected Works of Abraham Lincoln*, vol. 2, edited by Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press for the Abraham Lincoln Association, 1953–1955), pp. 400–405. Available online from the University of Library, quod.lib.umich.edu/l/lincoln/.
- Activity Sheet 6: Analyzing Abraham Lincoln's Speech on the *Dred Scott* Decision
- Source 5: Franklin D. Roosevelt, Fireside Chat, March 9, 1937, excerpted from *Presidential Speeches*, The Presidency, Miller Center, University of Virginia, millercenter.org/the-presidency/presidential-speeches

- Activity Sheet 7: Critical Thinking Questions about Roosevelt's Court-Packing Plan
- Source 6: "Fireside Chat," a 1937 Herblock Cartoon, © The Herb Block Foundation. Image courtesy of the Library of Congress Prints & Photographs Division, LC-DIG-hlb-00128.
- Activity Sheet 8: Interviewing a Supreme Court Nominee

HISTORICAL BACKGROUND

A Brief History of the US Supreme Court

by Bruce Allen Murphy, Lafayette College

When the Framers created America's tripartite governmental structure in the Constitution in 1787, they perceived the judiciary to be the least political and least powerful of the branches, because it was purposely removed from the people. The six justices of the first Supreme Court were not elected, but were appointed by a president and confirmed by a Senate that were, themselves, indirectly elected. The Court's responsibility was mandated only to hear cases raising federal issues, either as the original court or on appeal, drawn from specific categories of cases, among which were disputes involving the federal government, between different states, between citizens and the states, and between citizens of different states.

While presidents could change the direction of the Court as a result of new appointments, Congress was empowered both to "regulat[e]" the Supreme Court's appellate jurisdiction and the number of its members and to create any additional "inferior" federal judicial courts. Over time, however, both the size and scope of responsibility of the Supreme Court has changed as a result of these types of decisions, but mostly its power has expanded and contracted and its policy direction has changed course as a result of its own judicial decisions.

In the early nineteenth century, the nature of the Court's power and the relationship between federal and state power changed dramatically. In 1803, Chief Justice John Marshall set the Court on a path to its current great power. The ruling in *Marbury v. Madison* established the power of judicial review, making the Supreme Court the final interpreter of the Constitution and giving itself the power to say no to the two political branches. In 1819 the Court increased Congress's power by expanding the reach of the "necessary and proper clause" in Article I, thus allowing the federal government to dominate state powers.

Marshall's successor as chief justice, Roger Brooke Taney, set the Court on a more political course by trying to "solve" the issue of slavery and avoid the upcoming Civil War by his decision in *Dred Scott v. Sandford.* This decision denied basic human rights to an enslaved man who had been temporarily moved to a free state, helping to *cause* the Civil War.

The three Reconstruction Amendments (Thirteenth, Fourteenth, and Fifteenth), especially the Fourteenth Amendment, with its due process clause, led the Court to seek to explore the dual questions of how much the federal government could supervise the way states treated the constitutional rights of citizens and of state versus federal economic regulatory powers. For the next century, generations of justices debated whether some, or all, of the Bill of Rights could be applied to the states. At the same time, the Court considered whether the interstate commerce power of Congress could be used by the federal government to regulate business enterprises and commerce between, or even wholly within, states. The answer to both questions would eventually become a partial yes.

As the country grew, the number of cases eligible for review by the Court grew as well. In 1925, former US president and Chief Justice William Howard Taft led the Court to create the discretionary writ of *certiorari*. It allowed the justices to refuse to accept an appeal if fewer than four of the nine justices wanted to hear the case. Over the next fifteen years, the Court also created several more federally guaranteed rights when it used the Fourteenth Amendment's due process clause to apply several Bill of Rights provisions to the states, requiring them to grant those rights to their citizens.

After Franklin Delano Roosevelt became president in 1933, Congress created many New Deal programs that expanded federal power to alleviate the Great Depression. However, the Supreme Court, under Chief Justice Charles Evans Hughes, used its power of judicial review to uphold the authority of the states under the Tenth Amendment and a constricted interpretation of the Interstate Commerce Clause to overturn many of these laws. After his reelection, Roosevelt attempted to convince Congress to expand the Court, adding a justice for each justice over the age of 70 years old up to a maximum of fifteen justices. Hughes and Associate Justice Owen Roberts, who had voted to overturn New Deal legislation, switched their votes in new commerce cases in order to defeat this plan. This was dubbed the "switch in time to save nine." The Court then announced in 1938 in *Carolene Products v. United States* that while

they were now deferring to Congress in economic legislation, they might be more supportive of appeals dealing with the Bill of Rights and the Fourteenth Amendment.

It was the Warren Court, under Chief Justice Earl Warren, that created a revolution in the power of the Court, individual rights, and governmental authority. In *Brown v. Board of Education* in 1954, the Court ended the "separate but equal" segregation of public schools and expanded its reach in reconsidering earlier precedents by making clear that it was now prepared to use social science evidence to promote political change even in the absence of supportive precedents. After Presidents John F. Kennedy and Lyndon B. Johnson added more liberal justices to the Court, the Warren Court applied all but a few provisions of the Bill of Rights to the states. In so doing, the Court seemed to have completed the federalization of the government's powers over the states to preserve individual rights, even if they were not specifically written into the amendments.

Four appointments to the Court by conservative Republican Richard M. Nixon completely reversed the direction of the Court ideologically. Between 1970 and 2023, only five justices were appointed by Democratic Party presidents while Republican Party presidents appointed fifteen. Thus, Republican appointees have held the majority. That majority, under three successive conservative chief justices—Warren Burger, William Rehnquist, and John Roberts—largely cut back and at times completely overturned the decisions of the Warren Court.

Just where the Court goes next depends on which justice or justices control the voting center of the body, and what might result from any future changes to the membership of the institution.

Bruce Allen Murphy, Fred Morgan Kirby Professor of Civil Rights at Lafayette College, is the author of four biographies of Supreme Court justices: The Brandeis/Frankfurter Connection: The Secret Political Activities of Two Supreme Court Justices *(1982),* Fortas: The Rise and Ruin of a Supreme Court Justice *(1988),* Wild Bill: The Legend and Life of William O. Douglas *(2003), and* Scalia: A Court of One *(2014).*

LESSON 1

THE US SUPREME COURT'S ROLE IN GOVERNANCE, 1787–1788

BY CHRISTOPHER GILL (created in 2015, revised in 2023)

OVERVIEW

This lesson explores texts that define and interpret the Supreme Court's role in governance. Students will read an essay written by a scholar and excerpts from Alexander Hamilton's Federalist No. 78 and Article III of the US Constitution. Students' understanding will be assessed through a class discussion.

Students will be able to

- Understand and summarize key points of a secondary source
- Analyze primary sources and explain their authors' arguments
- Explain how American government has changed (e.g., the Supreme Court's authority, domain, composition)
- Explain technical terms (e.g., judicial review)
- Collaborate effectively with classmates

Christopher Gill has taught middle school in New York State since 2005.

GRADE LEVELS: 7–12

TIME FOR COMPLETION: One 45-minute period

UNIT OVERVIEW: This unit is one of the Gilder Lehrman Institute's Teaching Literacy through History™ (TLTH) resources, designed to align with the Common Core State Standards. Students will learn and practice skills that will help them analyze, assess, and develop knowledgeable and well-reasoned points of view on primary and secondary source materials. The five lessons in this unit illuminate pivotal moments in the US Supreme Court's history from 1787 to 1937.

MATERIALS

- Source 1: Historical Background: "A Brief History of the US Supreme Court" by Bruce Allen Murphy, Fred Morgan Kirby Professor of Civil Rights, Lafayette College
- Activity Sheet 1: Understanding a Scholarly Essay
- Activity Sheet 2: Analyzing Federalist No. 78 (1788) with an excerpt from [Alexander Hamilton], "Federalist No. 78: A View of the Constitution of the Judicial Department, in Relation to the Tenure of Good Behaviour," *The Federalist: A Collection of Essays, Written in Favour of the New Constitution, as Agreed upon by the Federal Convention, September 17, 1787*, vol. 2 (New York, 1788), p. 291, The Gilder Lehrman Institute of American History, GLC01551
- Activity Sheet 3: Analyzing Article III of the US Constitution (1787), *100 Milestone Documents*, Our Documents, National Archives, ourdocuments.gov

PROCEDURE

1. Optional: If you choose, you may share the essay by Professor Murphy with the students at any point in this unit. An activity sheet to help the students identify the ways the US Supreme Court has changed.

   If you do distribute the Historical Background, you may give the essay and the activity sheet to the students to read in class or outside of class to prepare for class discussion.

   Answers to Activity Sheet 1: 1 - D 2 - C 3 - F 4 - E 5 - B 6 - A

2. Discuss the US Supreme Court and the powers given to the judicial branch in the US Constitution. Ask the students what they know about the US Supreme Court and its role and responsibilities, and share information from the Historical Background by Professor Murphy as needed.
3. Distribute the excerpts from "Federalist No. 78" by Alexander Hamilton and review the purpose of the Federalist Papers.
    a. Have the students read the text and complete the Questions section about Hamilton's views of the power of the judicial branch and its relationship to the other branches of government.
    b. Assign each student to Group 1, 2, or 3. The students should review the text and prepare a response to the Discussion Question that matches their group number.
    c. After the students consider their own response, they should divide into the three groups to discuss their question and collaborate on a response.
4. Reconvene the class and distribute Activity Sheet 3 with the excerpts from Article III of the US Constitution. Give the students time to read the document and answer the questions on their own.
5. Wrap-up Discussion: Have the students compare and contrast "Federalist No. 78" and Article III of the Constitution.
    - What themes or concerns are addressed by both documents?
    - What is a point on which the two documents diverge? Is this difference significant?

    The students should use examples from the text to support their answers.

LESSON 2

MARBURY V. MADISON AND JUDICIAL REVIEW, 1803

BY CHRISTOPHER GILL (created in 2015, revised in 2023)

OVERVIEW

In this lesson students will read an excerpt from Chief Justice John Marshall's opinion in *Marbury v. Madison*. They will learn how Marshall prompted a new understanding of the Supreme Court's responsibilities, including "judicial review."

Students will be able to

- Analyze primary sources and explain their authors' arguments
- Explain how American government has changed (e.g., the Supreme Court's authority, domain)
- Explain technical terms (e.g., judicial review)
- Collaborate effectively with classmates

Christopher Gill has taught middle school in New York State since 2005.

GRADE LEVELS: 7–12

TIME FOR COMPLETION: One 45-minute period

UNIT OVERVIEW: This unit is one of the Gilder Lehrman Institute's Teaching Literacy through History™ (TLTH) resources, designed to align with the Common Core State Standards. Students will learn and practice skills that will help them analyze, assess, and develop knowledgeable and well-reasoned points of view on primary and secondary source materials. The five lessons in this unit illuminate pivotal moments in the US Supreme Court's history from 1787 to 1937.

MATERIALS

- Source 2: Chief Justice John Marshall's Majority Opinion (1803), with an excerpt from *Marbury* v. *Madison*, 5 U.S. 137 (1803), loc.gov/item/usrep005137/
- Activity Sheet 4: Summarizing Chief Justice Marshall in *Marbury v. Madison*

PROCEDURE

1. In this lesson, students may work in groups or independently.
2. Distribute Source 2 with the excerpts from John Marshall's opinion in *Marbury* v. *Madison* (1803).
    a. Depending on the reading level of the students, you can have them read the documents independently or "share read" the documents with them. This is done by having the students follow along silently while you begin to read aloud, modeling prosody, inflection, and punctuation. Then ask the class to join in with the reading while you continue to read aloud, still serving as the model. This technique will support struggling readers as well as English language learners (ELL).
3. Distribute Activity Sheet 4.
    a. The students will answer the questions using the text excerpts in the boxes.
    b. After answering the questions, students will use those answers to create a summary of this excerpt from Chief Justice John Marshall's opinion in their own words.
    c. Students or student groups share their summaries.
4. Discussion Question: How did Chief Justice Marshall's opinion establish the precedent of "judicial review"?

LESSON 3

THE *DRED SCOTT* DECISION, STANDING, AND "SETTLED LAW," 1857

BY TIM BAILEY (created in 2023)

OVERVIEW

In this lesson students will read from Justice Roger Taney's majority opinion in the case of *Dred Scot v. Sandford* and a response by future president Abraham Lincoln. Each seeks to reduce Supreme Court authority in different ways regarding whose cases may be heard and the permanence of Court rulings.

Students will be able to

- Analyze primary sources and explain their authors' arguments
- Explain how American government has changed (e.g., the Supreme Court's authority, domain)
- Explain technical terms (e.g., standing)
- Collaborate effectively with classmates

Tim Bailey taught middle school and elementary school in Utah for over two decades. Named the 2009 National History Teacher of the Year, he is the Gilder Lehrman Institute's director of curriculum development and instructional design.

GRADE LEVELS: 7–12

TIME FOR COMPLETION: One 45-minute period

UNIT OVERVIEW: This unit is one of the Gilder Lehrman Institute's Teaching Literacy through History™ (TLTH) resources, designed to align with the Common Core State Standards. Students will learn and practice skills that will help them analyze, assess, and develop knowledgeable and well-reasoned points of view on primary and secondary source materials. The five lessons in this unit illuminate pivotal moments in the US Supreme Court's history from 1787 to 1937.

MATERIALS

- Source 3: *Dred Scott v. Sandford* (1857) with an excerpt from the Statement of the Case, *Dred Scott v. Sandford*, 60 U.S. 393 (1856), Law Library of Congress, loc.gov/item/usrep060393a/
- Activity Sheet 5: Critical Thinking Questions about *Dred Scott v. Sandford*
- Source 4: Abraham Lincoln's Speech on the *Dred Scott* Decision (1857), excerpted from Abraham Lincoln, Speech at Springfield, Illinois, June 26, 1857, in *The Collected Works of Abraham Lincoln*, vol. 2, edited by Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press for the Abraham Lincoln Association, 1953–1955), pp. 400–405. Available online from the University of Michigan Library, quod.lib.umich.edu/l/lincoln/.
- Activity Sheet 6: Analyzing Abraham Lincoln's Speech on the *Dred Scott* Decision

PROCEDURE

1. Before beginning this lesson, the students should be familiar with the period preceding the Civil War and the rising tensions over the practice of slavery that would lead to war. They should be familiar with the Compromise of 1850 and other attempts to avert open war between the states.
2. Divide the class into "critical-thinking groups" of three to four students.
3. Discuss the information in the Historical Background and refresh students' knowledge of the rising tensions prior to the Civil War.
4. Distribute Source 3, the excerpts from the Statement of the Case from *Dred Scott v. Sandford*.
5. Depending on the reading level of the students, you can have them read the excerpts in their groups or you can

share read the excerpts with the class as described in Lesson 2.

6. Distribute a copy of Activity Sheet 5 to every student.

    a. Ask the students the first critical thinking question. Explain that they must back up their answer with evidence taken directly from the text. The students should discuss the question with their group and agree on an answer. Have students compare answers with other groups. Make sure they are using textual evidence to support their answers.

    b. Students will now complete the rest of the questions with their group, continuing to reach answers through consensus.

7. Distribute Source 4 with excerpts from Lincoln's speech on the *Dred Scott* decision. You may choose to share read the excerpts with the class, have the groups read aloud, or have the students read them silently to themselves.

8. Distribute Activity Sheet 6. Discuss with the class how to select an important or powerful phrase or sentence in the document and express in writing the reason for selecting that particular phrase or sentence. The students will work with their groups to arrive at consensus to complete the activity sheet.

9. Ask students to discuss the following question in their groups: Using evidence from these primary source documents, how did Chief Justice Taney and Abraham Lincoln agree and/or disagree on the issue of slavery and the role of the Supreme Court?

10. Student groups will now share out their answers for a class discussion. One important point to note is that although Lincoln expressed strong objections to slavery and this decision by the Supreme Court, he did not argue the legal status of slavery in the United States at this time.

LESSON 4

PRESIDENT ROOSEVELT'S COURT-PACKING PLAN, 1937

BY CHRISTOPHER GILL (created in 2015, revised in 2023)

OVERVIEW

In this lesson, students will read one of President Franklin Roosevelt's "fireside chats." In this radio broadcast, delivered after the Supreme Court had deemed some New Deal programs unconstitutional, Roosevelt proposed adding new justices to the Supreme Court. Then students will analyze a political cartoon responding to this proposal.

Students will be able to

- Analyze primary sources and explain their authors' arguments
- Explain how American government has changed (e.g., the Supreme Court's authority, domain, composition)
- Explain technical terms (e.g., court packing)
- Collaborate effectively with classmates

Christopher Gill has taught middle school in New York State since 2005.

GRADE LEVELS: 7–12

TIME FOR COMPLETION: One 45-minute period

UNIT OVERVIEW: This unit is one of the Gilder Lehrman Institute's Teaching Literacy through History™ (TLTH) resources, designed to align with the Common Core State Standards. Students will learn and practice skills that will help them analyze, assess, and develop knowledgeable and well-reasoned points of view on primary and secondary source materials. The five lessons in this unit illuminate pivotal moments in the US Supreme Court's history from 1787 to 1937.

MATERIALS

- Source 5: President Franklin D. Roosevelt's Fireside Chat, March 9, 1937, excerpted from *Presidential Speeches*, The Presidency, Miller Center, University of Virginia, millercenter.org/the-presidency/presidential-speeches
- Activity Sheet 7: Critical Thinking Questions about Roosevelt's Court-Packing Plan
- Source 6: "Fireside Chat," a 1937 Herblock Cartoon, © The Herb Block Foundation. Image courtesy of the Library of Congress Prints & Photographs Division, LC-DIG-hlb-00128.

PROCEDURE

1. Students should be familiar with Franklin D. Roosevelt's New Deal and the Supreme Court's use of judicial review to overturn some New Deal programs.
2. Distribute Source 5, Franklin Roosevelt's Fireside Chat from March 9, 1937, with Activity Sheet 7. The students will read the document and answer the questions.
3. Distribute Source 6, Herblock's political cartoon "Fireside Chat" from 1937 and have the students complete the activity at the bottom of the sheet.
4. Divide the class into groups of three to five students to discuss their responses to the political cartoon and share out connections between Roosevelt's Fireside Chat and the cartoon. How are the documents related?

LESSON 5

TRANSFORMING THE SUPREME COURT, 1787–1937

BY CHRISTOPHER GILL (created in 2015, revised in 2023)

OVERVIEW

This lesson provides students with an opportunity to review everything they have learned about changes to the Supreme Court's authority, domain, and composition. They will demonstrate comprehension through a question-and-answer activity that will engage all the documents they have used in this unit.

Students will be able to

- Analyze primary sources and explain their authors' arguments
- Explain how American government has changed (e.g., the Supreme Court's authority, domain, composition)
- Explain technical terms (e.g., judicial review, standing, court packing)
- Collaborate effectively with classmates
- Demonstrate oral communication skills

Christopher Gill has taught middle school in New York State since 2005.

GRADE LEVELS: 7–12

TIME FOR COMPLETION: One or two 45-minute periods

UNIT OVERVIEW: This unit is one of the Gilder Lehrman Institute's Teaching Literacy through History™ (TLTH) resources, designed to align with the Common Core State Standards. Students will learn and practice skills that will help them analyze, assess, and develop knowledgeable and well-reasoned points of view on primary and secondary source materials. The five lessons in this unit illuminate pivotal moments in the US Supreme Court's history from 1787 to 1937.

MATERIALS

- Source 1: Historical Background: "A Brief History of the US Supreme Court" by Bruce Allen Murphy, Fred Morgan Kirby Professor of Civil Rights, Lafayette College
- Activity Sheet 1: Understanding a Scholarly Essay
- Activity Sheet 2: Analyzing Federalist No. 78 (1788), with an excerpt from [Alexander Hamilton], "A View of the Constitution of the Judicial Department, in Relation to the Tenure of Good Behaviour," *The Federalist: A Collection of Essays, Written in Favour of the New Constitution, as Agreed upon by the Federal Convention, September 17, 1787*, vol. 2 (New York, 1788), p. 291, The Gilder Lehrman Institute of American History, GLC01551
- Activity Sheet 3: Analyzing Article III of the US Constitution (1787), *100 Milestone Documents*, Our Documents, National Archives, ourdocuments.gov
- Source 2: Chief Justice John Marshall's Majority Opinion (1803), with an excerpt from *Marbury* v. *Madison*, 5 U.S. 137 (1803), Law Library of Congress, loc.gov/item/usrep005137/
- Activity Sheet 4: Summarizing Chief Justice Marshall on *Marbury v. Madison*
- Source 3: *Dred Scott v. Sandford* (1857) with an excerpt from the Statement of the Case, *Dred Scott v. Sandford*, 60 U.S. 393 (1856), Law Library of Congress, loc.gov/item/usrep060393a/
- Activity Sheet 5: Critical Thinking Questions about *Dred Scott v. Sandford*

- Source 4: Abraham Lincoln's Speech on the *Dred Scott* Decision (1857), excerpted from Abraham Lincoln, Speech at Springfield, Illinois, June 26, 1857, in *The Collected Works of Abraham Lincoln*, vol. 2, edited by Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press for the Abraham Lincoln Association, 1953–1955), pp. 400–405. Available online from the University of Michigan Library, quod.lib.umich.edu/l/lincoln/.
- Activity Sheet 6: Analyzing Abraham Lincoln's Speech on the *Dred Scott* Decision
- Source 5: Franklin D. Roosevelt, Fireside Chat, March 9, 1937, excerpted from *Presidential Speeches*, The Presidency, Miller Center, University of Virginia, millercenter.org/the-presidency/presidential-speeches
- Activity Sheet 7: Critical Thinking Questions about Roosevelt's Court-Packing Plan
- Source 6: "Fireside Chat," a 1937 Herblock Cartoon, © The Herb Block Foundation. Image courtesy of the Library of Congress Prints & Photographs Division, LC-DIG-hlb-00128.
- Activity Sheet 8: Interviewing a Supreme Court Nominee

PROCEDURE

1. Prepare the students to interview a fictional Supreme Court nominee as though they were members of the US Senate. If possible, have them watch a historical clip of such an interview.
2. Divide the class into four equal groups (or six groups if you have a large class). One student in each group takes the role of the Supreme Court nominee and the others take the roles of US senators.
3. Distribute Activity Sheet 8 to all the students.
4. Provide the students with one exemplary question to include in their interview, such as "How do you interpret the meaning of 'judicial review'?"
5. Each group should formulate a set of questions and responses, starting with the question you provided, preparing to interview the fictional nominee on their knowledge of the Supreme Court and their positions on historical decisions.

   You may ask all groups to base their interview on all of the sources used in this unit or assign one lesson's document(s) to each group.
6. Have all the groups present their interviews in class. You may need a second class period to complete the activity.
7. If there is time, students who are not presenting could pose questions to other groups' nominees. Each group should evaluate the "nominee's" knowledge of the Supreme Court and its historical changes on a scale from 1 to 3.
8. Debrief the class, discussing what the most effective questions and responses were and how well the responses incorporated evidence from different sources.

Source 1: Historical Background

A Brief History of the US Supreme Court

by Bruce Allen Murphy, Lafayette College

When the Framers created America's tripartite governmental structure in the Constitution in 1787, they perceived the judiciary to be the least political and least powerful of the branches, because it was purposely removed from the people. The six justices of the first Supreme Court were not elected, but were appointed by a president and confirmed by a Senate that were, themselves, indirectly elected. The Court's responsibility was mandated only to hear cases raising federal issues, either as the original court or on appeal, drawn from specific categories of cases, among which were disputes involving the federal government, between different states, between citizens and the states, and between citizens of different states.

While presidents could change the direction of the Court as a result of new appointments, Congress was empowered both to "regulat[e]" the Supreme Court's appellate jurisdiction and the number of its members and to create any additional "inferior" federal judicial courts. Over time, however, both the size and scope of responsibility of the Supreme Court has changed as a result of these types of decisions, but mostly its power has expanded and contracted and its policy direction has changed course as a result of its own judicial decisions.

In the early nineteenth century, the nature of the Court's power and the relationship between federal and state power changed dramatically. In 1803, Chief Justice John Marshall set the Court on a path to its current great power. The ruling in *Marbury v. Madison* established the power of judicial review, making the Supreme Court the final interpreter of the Constitution and giving itself the power to say no to the two political branches. In 1819 the Court increased Congress's power by expanding the reach of the "necessary and proper clause" in Article I, thus allowing the federal government to dominate state powers.

Marshall's successor as chief justice, Roger Brooke Taney, set the Court on a more political course by trying to "solve" the issue of slavery and avoid the upcoming Civil War by his decision in *Dred Scott v. Sandford.* This decision denied basic human rights to an enslaved man who had been temporarily moved to a free state, helping to *cause* the Civil War.

The three Reconstruction Amendments (Thirteenth, Fourteenth, and Fifteenth), especially the Fourteenth Amendment, with its due process clause, led the Court to seek to explore the dual questions of how much the federal government could supervise the way states treated the constitutional rights of citizens and of state versus federal economic regulatory powers. For the next century, generations of justices debated whether some, or all, of the Bill of Rights could be applied to the states. At the same time, the Court considered whether the interstate commerce power of Congress could be used by the federal government to regulate business enterprises and commerce between, or even wholly within, states. The answer to both questions would eventually become a partial yes.

As the country grew, the number of cases eligible for review by the Court grew as well. In 1925, former US president and Chief Justice William Howard Taft led the Court to create the discretionary writ of *certiorari*. It allowed the justices to refuse to accept an appeal if fewer than four of the nine justices wanted to hear the case. Over the next fifteen years, the Court also created several more federally guaranteed rights when it used the Fourteenth Amendment's due process clause to apply several Bill of Rights provisions to the states, requiring them to grant those rights to their citizens.

After Franklin Delano Roosevelt became president in 1933, Congress created many New Deal programs that expanded federal power to alleviate the Great Depression. However, the Supreme Court, under Chief Justice Charles Evans Hughes, used its power of judicial review to uphold the authority of the states under the Tenth Amendment and a constricted interpretation of the Interstate Commerce Clause to overturn many of these laws. After his reelection, Roosevelt attempted to convince Congress to expand the Court, adding a justice for each justice over the age of 70 years old up to a maximum of fifteen justices. Hughes and Associate Justice Owen Roberts, who had voted to overturn New Deal legislation, switched their votes in new commerce cases in order to defeat this plan. This was dubbed the "switch in time to save nine." The Court then announced in 1938 in *Carolene Products v. United States* that while

they were now deferring to Congress in economic legislation, they might be more supportive of appeals dealing with the Bill of Rights and the Fourteenth Amendment.

It was the Warren Court, under Chief Justice Earl Warren, that created a revolution in the power of the Court, individual rights, and governmental authority. In *Brown v. Board of Education* in 1954, the Court ended the "separate but equal" segregation of public schools and expanded its reach in reconsidering earlier precedents by making clear that it was now prepared to use social science evidence to promote political change even in the absence of supportive precedents. After Presidents John F. Kennedy and Lyndon B. Johnson added more liberal justices to the Court, the Warren Court applied all but a few provisions of the Bill of Rights to the states. In so doing, the Court seemed to have completed the federalization of the government's powers over the states to preserve individual rights, even if they were not specifically written into the amendments.

Four appointments to the Court by conservative Republican Richard M. Nixon completely reversed the direction of the Court ideologically. Between 1970 and 2023, only five justices were appointed by Democratic Party presidents while Republican Party presidents appointed fifteen. Thus, Republican appointees have held the majority. That majority, under three successive conservative chief justices—Warren Burger, William Rehnquist, and John Roberts—largely cut back and at times completely overturned the decisions of the Warren Court.

Just where the Court goes next depends on which justice or justices control the voting center of the body, and what might result from any future changes to the membership of the institution.

Bruce Allen Murphy, Fred Morgan Kirby Professor of Civil Rights at Lafayette College, is the author of four biographies of Supreme Court justices: The Brandeis/Frankfurter Connection: The Secret Political Activities of Two Supreme Court Justices *(1982),* Fortas: The Rise and Ruin of a Supreme Court Justice *(1988),* Wild Bill: The Legend and Life of William O. Douglas *(2003), and* Scalia: A Court of One *(2014).*

NAME PERIOD DATE

Activity Sheet 1: Understanding a Scholarly Essay

Match each way that the Supreme Court has changed to a description or example of that change from Professor Murphy's essay. Put the letter of the correct description or example in the left column next to the appropriate change.

Letter	Change	Description or Example
____	1. Subordination to other branches of government	A. Conservative Nixon appointees overturned the Warren Court's decisions.
____	2. Number and type of cases eligible for review	B. In *Brown v. Board of Education* in 1954, the Supreme Court used social science evidence.
____	3. Dominance over other branches of government	C. In 1925 the Supreme Court began to refuse to hear an appeal unless at least four of the nine justices agreed to do so.
____	4. Influence over government policy	D. After President Franklin Roosevelt threatened to add new justices, the justices who had voted to overturn New Deal legislation switched their votes in new commerce cases.
____	5. Acceptance of new kinds of evidence	E. Justice Roger Brooke Taney tried to "solve" the issue of slavery in the *Dred Scott* decision.
____	6. The political leanings of justices serving on the Supreme Court	F. The Supreme Court declared that it could rule legislation or executive actions unconstitutional.

NAME PERIOD DATE

Activity Sheet 2: Analyzing Federalist No. 78 (1788)

> . . . The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors, but holds the sword of the community. The legislative not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.
>
> —PUBLIUS [Alexander Hamilton], 1788

Source: *The Federalist: A Collection of Essays, Written in Favour of the New Constitution, as Agreed upon by the Federal Convention, September 17, 1787*, vol. 2 (New York, 1788), p. 291. The Gilder Lehrman Institute of American History, GLC01551.

Questions

According to Federalist No. 78

1. What powers should the executive branch have?

2. What powers should the legislative branch have?

3. What powers should the judicial branch have?

Discussion Questions

1. In Alexander Hamilton's opinion, why would the judicial branch of the government be the "least dangerous"?
2. According to Hamilton, what did the judicial branch need to depend on for their power?
3. What is the tone of Hamilton's attitude toward the judicial branch? Which words convey his tone?

NAME PERIOD DATE

Activity Sheet 3: Analyzing Article III of the US Constitution (1787)

Section 1.

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

Section 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . to Controversies to which the United States shall be a Party;—to Controversies between two or more States . . . and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

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

Source: *100 Milestone Documents*, Our Documents, National Archives, ourdocuments.gov

Questions

1. According to Article III of the US Constitution, what powers does the judicial branch have?

2. How does the judicial branch depend on the legislative branch (Congress) for power?

3. In what ways does the definition and description of the Supreme Court in the Constitution make it difficult to understand the power and purpose of the Supreme Court?

Source 2: Chief Justice John Marshall's Majority Opinion in *Marbury v. Madison* (1803)

Chief Justice Marshall delivered the opinion of the Court:

. . . The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable.

Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

This theory is essentially attached to a written constitution, and is consequently to be considered, by this court, as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.

If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply. . . .

Source: *Marbury v. Madison*, 5 U.S. 137 (1803), Law Library of Congress.

NAME PERIOD DATE

Activity Sheet 4: Summarizing Chief Justice Marshall in *Marbury v. Madison*

Read the excerpt from Chief Justice Marshall's opinion on the left and answer the corresponding question on the right. Then summarize the ruling based on Marshall's statements.

. . . The constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable.	Question: What is the consequence if the Constitution is not the paramount law of the nation?
Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void. This theory is essentially attached to a written constitution, and is consequently to be considered, by this court, as one of the fundamental principles of our society. It is not therefore to be lost sight of in the further consideration of this subject.	Question: What did Marshall consider one of the fundamental principles of our society?
If an act of the legislature, repugnant to the constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it constitute a rule as operative as if it was a law? This would be to overthrow in fact what was established in theory; and would seem, at first view, an absurdity too gross to be insisted on. It shall, however, receive a more attentive consideration.	Question: What is the effect of an act of the legislature being contrary to the Constitution?

NAME PERIOD DATE

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.	Question: According to Marshall, what should the court do when two laws conflict with each other?
So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.	Question: How did Chief Justice Marshall define "the very essence of judicial duty"?
If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply. . . .	Question: When the Constitution and a legislative act both apply, which has precedence?

Source: *Marbury v. Madison*, 5 U.S. 137 (1803), Law Library of Congress.

Summary

Discussion Question

How did Chief Justice Marshall's opinion establish the precedent of "judicial review"?

Source 3: Statement of the Case in *Dred Scott v. Stanford* (1857)

Dred Scott, Plaintiff In Error, v. John F. A. Sandford. . . .

4. A free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a "citizen" within the meaning of the Constitution of the United States.

5. When the Constitution was adopted, they were not regarded in any of the States as members of the community which constituted the State, and were not numbered among its "people or citizens." Consequently, the special rights and immunities guarantied to citizens do not apply to them. And not being "citizens" within the meaning of the Constitution, they are not entitled to sue in that character in a court of the United States, and the Circuit Court has not jurisdiction in such a suit.

6. The only two clauses in the Constitution which point to this race, treat them as persons whom it was morally lawful to deal in as articles of property and to hold as slaves.

7. Since the adoption of the Constitution of the United States, no state can by any subsequent law make a foreigner or any other description of persons citizens of the United States, nor entitle them to the rights and privileges secured to citizens by that instrument.

8. A State, by its laws passed since the adoption of the Constitution, may put a foreigner or any other description of persons upon a footing with its own citizens, as to all the rights and privileges enjoyed by them within its dominion and by its laws. But that will not make him a citizen of the United States, nor entitle him to sue in its courts, nor to any of the privileges and immunities of a citizen in another State.

9. The change in public opinion and feeling in relation to the African race, which has taken place since the adoption of the Constitution, cannot change its construction and meaning, and it must be construed and administered now according to its true meaning and intention when it was formed and adopted.

10. The plaintiff having admitted, by his demurrer to the plea in abatement, that his ancestors were imported from Africa and sold as slaves, he is not a citizen of the State of Missouri according to the Constitution of the United States, and was not entitled to sue in that character in the Circuit Court.

11. This being the case, the judgment of the court below, in favor of the plaintiff on the plea in abatement, was erroneous.

Source: Statement of the Case, *Dred Scott v. Sandford*, 60 U.S. 393 (1856), loc.gov/item/usrep060393a/

NAME PERIOD DATE

Activity Sheet 5: Critical Thinking Questions about *Dred Scott v. Sandford*

1. What is the citizenship status of enslaved individuals, according to the Supreme Court?

2. According to the Supreme Court, why couldn't Dred Scott sue for his freedom?

3. According to the Court, what powers did a state have regarding the granting of citizenship?

4. The Court acknowledged that public opinion about slavery might be changing. How did that affect the Court's decision?

Source 4: Abraham Lincoln's Speech on the *Dred Scott* Decision (1857)

. . . And now as to the Dred Scott decision. That decision declares two propositions—first, that a negro cannot sue in the U.S. Courts; and secondly, that Congress cannot prohibit slavery in the Territories. . . .

. . . We think its decisions on Constitutional questions, when fully settled, should control, not only the particular cases decided, but the general policy of the country. . . . More than this would be revolution. But we think the Dred Scott decision is erroneous . . . and we shall do what we can to have it to over-rule this. We offer no *resistance* to it. . . .

If this important decision had been made by the unanimous concurrence of the judges, and without any apparent partisan bias, and in accordance with legal public expectation, and with the steady practice of the departments throughout our history, and had been in no part, based on assumed historical facts which are not really true; or, if wanting in some of these, it had been before the court more than once, and had there been affirmed and re-affirmed through a course of years, it then might be, perhaps would be, factious, nay, even revolutionary, to not acquiesce in it as a precedent.

But when, as it is true we find it wanting in all these claims to the public confidence, it is not resistance, it is not factious, it is not even disrespectful, to treat it as not having yet quite established a settled doctrine for the country.

Judge [Stephen] Douglas . . . finds the Republicans insisting that the Declaration of Independence includes ALL men, black as well as white; and forthwith he boldly denies that it includes negroes at all, and proceeds to argue gravely that all who contend it does, do so only because they want to vote, and eat, and sleep, and marry with negroes! . . . Now I protest against that counterfeit logic which concludes that, because I do not want a black woman for a *slave* I must necessarily want her for a *wife*. I need not have her for either, I can just leave her alone. In some respects she certainly is not my equal; but in her natural right to eat the bread she earns with her own hands without asking leave of any one else, she is my equal, and the equal of all others.

Chief Justice Taney, in this opinion in the Dred Scott case, admits that the language of the Declaration is broad enough to include the whole human family, but he and Judge Douglas argue that the authors of that instrument did not intend to include negroes. . . . I think that the authors of that notable instrument intended to include *all* men, but they did not intend to declare all men equal *in all respects*. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. . . . They did consider all men created equal—equal in "certain inalienable rights, among which are life, liberty, and the pursuit of happiness."

Source: Abraham Lincoln, Speech at Springfield, Illinois, June 26, 1857, in *The Collected Works of Abraham Lincoln*, vol. 2, edited by Roy P. Basler et al. (New Brunswick, NJ: Rutgers University Press for the Abraham Lincoln Association, 1953–1955), pp. 400–405.

NAME PERIOD DATE

Activity Sheet 6: Analyzing Abraham Lincoln's Speech on the *Dred Scott* Decision

Which phrases or sentences in Lincoln's speech are the most important or powerful? Choose three and give the reason for each choice. Pay particular attention to Lincoln's comments regarding the Supreme Court.

Phrase 1

Why is this phrase or sentence important or powerful?

Phrase 2

Why is this phrase or sentence important or powerful?

Phrase 3

Why is this phrase or sentence important or powerful?

Source 5: President Franklin Roosevelt's Fireside Chat (1937)

Tonight, sitting at my desk in the White House, I make my first radio report to the people in my second term of office.

I hope that you have re-read the Constitution of the United States in these past few weeks. Like the Bible, it ought to be read again and again.

It is an easy document to understand. . . . I honestly believe to have been the clear and underlying purpose of the patriots who wrote a Federal Constitution to create a National Government with national power, intended as they said, "to form a more perfect union . . . for ourselves and our posterity."

. . . Since the rise of the modern movement for social and economic progress through legislation, the Court has more and more often and more and more boldly asserted a power to veto laws passed by the Congress and State Legislatures in complete disregard of this original limitation. In the last four years the sound rule of giving statutes the benefit of all reasonable doubt has been cast aside. The Court has been acting not as a judicial body, but as a policy-making body.

When the Congress has sought to stabilize national agriculture, to improve the conditions of labor, to safeguard business against unfair competition, to protect our national resources, and in many other ways, to serve our clearly national needs, the majority of the Court has been assuming the power to pass on the wisdom of these acts of the Congress—and to approve or disapprove the public policy written into these laws.

We have, therefore, reached the point as a nation where we must take action to save the Constitution from the Court and the Court from itself. We must find a way to take an appeal from the Supreme Court to the Constitution itself. We want a Supreme Court which will do justice under the Constitution and not over it. In our courts we want a government of laws and not of men.

What is my proposal? It is simply this: whenever a Judge or Justice of any Federal Court has reached the age of seventy and does not avail himself of the opportunity to retire on a pension, a new member shall be appointed by the President then in office, with the approval, as required by the Constitution, of the Senate of the United States.

That plan has two chief purposes. By bringing into the judicial system a steady and continuing stream of new and younger blood, I hope, first, to make the administration of all Federal justice speedier and, therefore, less costly; secondly, to bring to the decision of social and economic problems younger men who have had personal experience and contact with modern facts and circumstances under which average men have to live and work. This plan will save our national Constitution from hardening of the judicial arteries.

The number of Judges to be appointed would depend wholly on the decision of present Judges now over seventy, or those who would subsequently reach the age of seventy.

If, for instance, any one of the six Justices of the Supreme Court now over the age of seventy should retire as provided under the plan, no additional place would be created. Consequently, although there never can be more than fifteen, there may be only fourteen, or thirteen, or twelve. And there may be only nine.

Is it a dangerous precedent for the Congress to change the number of the Justices? The Congress has always had, and will have, that power. The number of justices has been changed several times before, in the Administration of John Adams and Thomas Jefferson—both signers of the Declaration of Independence – Andrew Jackson, Abraham Lincoln and Ulysses S. Grant.

I suggest only the addition of Justices to the bench in accordance with a clearly defined principle relating to a clearly defined age limit. . . .

> Like all lawyers, like all Americans, I regret the necessity of this controversy. But the welfare of the United States, and indeed of the Constitution itself, is what we all must think about first. Our difficulty with the Court today rises not from the Court as an institution but from human beings within it. But we cannot yield our constitutional destiny to the personal judgement of a few men who, being fearful of the future, would deny us the necessary means of dealing with the present.
>
> This plan of mine is no attack on the Court; it seeks to restore the Court to its rightful and historic place in our Constitutional Government and to have it resume its high task of building anew on the Constitution "a system of living law." The Court itself can best undo what the Court has done. . . .
>
> During the past half century the balance of power between the three great branches of the Federal Government, has been tipped out of balance by the Courts in direct contradiction of the high purposes of the framers of the Constitution. It is my purpose to restore that balance. You who know me will accept my solemn assurance that in a world in which democracy is under attack, I seek to make American democracy succeed. You and I will do our part.

Source: *Presidential Speeches*, The Presidency, Miller Center, University of Virginia, millercenter.org/the-presidency/presidential-speeches.

NAME PERIOD DATE

Activity Sheet 7: Critical Thinking Questions about Roosevelt's Court-Packing Plan

1. On what grounds did President Roosevelt suggest that the Supreme Court was acting beyond its Article III powers and responsibilities?

2. According to President Roosevelt, why must "America take action and save the Constitution"?

3. What historical examples did President Roosevelt use in his speech to win over the American people?

4. What were the major aspects of President Roosevelt's proposal to change the Supreme Court?

NAME PERIOD DATE

Source 6: "Fireside Chat" by Herb Block (1937)

A 1937 Herblock Cartoon, © The Herb Block Foundation. (Image courtesy Library of Congress)

I See . . .	I Think . . .

NAME PERIOD DATE

Activity Sheet 8: Interviewing a Supreme Court Nominee

Question:	Answer: Evidence from Text:
Question:	Answer: Evidence from Text:
Question:	Answer: Evidence from Text:

NAME PERIOD DATE

Question:	Answer: Evidence from Text:
Question:	Answer: Evidence from Text:
Question:	Answer: Evidence from Text: