Lesson Objectives:

• Explain how the Preamble differs from the introduction of the Articles of Confederation.
• List and explain the six purposes of the Constitution as stated in the Preamble.
• Explain how the Emoluments Clause and the ban on State Title of Nobility support the republican form of government.
• Explain the purpose of the Guarantee Clause and the three criteria of a republican government.
• Discuss the ratification process for the Constitution and how it differed from that of the Articles of Confederation.
• Know how many states needed to ratify the Constitution for it to go into effect.
• Explain the purpose of the Attestation Clause and the significance of the way in which the Constitution is dated.
• Understand how the Supremacy Clause resolves conflicts between state and federal laws.
• Understand that the Constitution is supreme.
• Understand the purpose of the Oaths Clause and the Religious Test Clause and to which officials it applies.
• Understand the purpose of the Debt Assumption Clause.
Part 1:  
A New Constitution for a Young Republic

Preamble  
Essay by Forrest McDonald

Emoluments Clause  
Article I, Section 9, Clause 8

No State Title of Nobility  
Article I, Section 10, Clause 1

 Guarantee Clause  
Article IV, Section 4

Ratification Clause  
Article VII, Clause 1

Attestation Clause  
Article VII, Clause 2

Preamble

*Essay by Forrest McDonald (pp. 43–46)*

The Preamble of the Constitution was an afterthought composed by Gouverneur Morris, a delegate from Pennsylvania and member of the Committee of Style. Though the Preamble does not have any substantive legal meaning, it is nevertheless a powerful statement of the purpose of the Constitution and a reminder of the principles of the Declaration of Independence that undergird the document.

As Forrest McDonald explains, the very first words of the Preamble—“We the People of the United States”—show a marked departure from the Articles of Confederation. The Constitution’s introductory words indicate that the people of the United States were members of one united country rather than representatives from different states forming a pact between states (as was the case under the Articles of Confederation). The use of “We the People” was also necessary considering the ratification procedure. The Preamble did not list the name of each state, because the Constitution would go into effect whenever the popularly elected ratifying conventions of nine states approved it. It was not obvious which nine would ratify first, and the Framers did not want to add names retroactively.

Some criticized the language for failing to list the states. Patrick Henry suggested that the absence of the list of states indicated that the Constitution created a national, consolidated government. Governor Edmund Randolph responded that “the government is for the people; and the misfortune was, that the people had no agency in the government before.”
The Preamble presents six purposes of the Constitution. Of these six, two are immediate requirements of safety and security common to every sovereign nation: “insure domestic tranquility” and “provide for the common defense.” Two look forward to building a particular society that upholds the rule of law and fosters prosperity and well-being for all of its citizens: “establish Justice” and “promote the General Welfare.” The other two objectives grandly express the Founders’ hopes for their nation’s and their people’s future: The Constitution is meant to “form a more perfect union” and “secure the blessings of liberty to ourselves and our posterity.”

“To form a more perfect Union” does not mean that the Founders thought that they could create a truly perfect government. Rather, the phrase meant a better and stronger union than the one that had existed under the Articles of Confederation. The second objective, “to establish justice,” implies that justice did not exist under the previous government. Gouverneur Morris chose the words carefully: While court systems existed prior to the Constitution, state governments violated individuals’ rights. The Constitution would guard against this behavior with an independent judiciary and separate prohibitions of certain state practices.

The third purpose, “to insure domestic Tranquility” was vital because, during this time, Americans were accustomed to rebelling against unpopular governments. The Constitution would prevent uprisings such as the Whiskey Rebellion (1794) and Fries’s Rebellion (1799). To insure tranquility, the new Constitution would give Congress authority over the state militias and guarantee to each state a republican form of government. The fourth objective, “to provide for the common defense,” was the reason the United States came into being. However, Americans were wary of strong standing armies, which could enslave the country as well as defend it. The Founders sought both to ensure a strong defense and to provide for these concerns about standing armies.

The fifth purpose, “to promote the general Welfare,” was not a broad grant of power to the federal government. “General” means applicable to the whole, not to any particular state or special interest. Thus, the Preamble limits government by ensuring that it always acts in the interests of the whole rather than for particular states or interests. The sixth and final purpose is to “secure the Blessings of Liberty to ourselves and our Posterity.” This broadly refers to the whole Constitution insofar as it establishes a limited government to protect individual liberties.

The Preamble, furthermore, points back to the principles and rights proclaimed in the Declaration of Independence. Far from negating the principles leading to the American Revolution, the Constitution fulfills them. The Preamble as a whole declares that the Constitution was designed to secure the rights of life, liberty, and the pursuit of happiness proclaimed in the Declaration.
Unit 1

Make a Real-Life Connection

Read the Preamble aloud. Ask students whether they have heard these words before and, if they have, where they have heard them. (in school, on television) Ask: Why do you think the Preamble is so well known? (Answers will vary. Students may say that the Preamble expresses the ideas behind the formation of the United States Constitution.)

Make a Real-Life Connection

Ask: In his discussion of the Preamble, Forrest McDonald explains what the phrase “general Welfare” meant to the Framers of the Constitution. What did they understand the phrase to mean? (It was a limitation on government’s power. Government could address certain general interests rather than regional or parochial ones.) How is the word “welfare” used today? (persons’ general well-being, social programs intended to promote well-being)

Active Reading

Read aloud the opening of the Preamble. Ask: What impression do these words make on you? If necessary, prompt students by asking: What do these words say about the people of the United States? (Students may say that the people of the United States are now one.) Read aloud the opening of the Articles of Confederation on pages 43 and 44. Ask: What impression do these words make on you? (Students may say that all people in one state are one and that each state is separate.)

Write About It

Point out that McDonald discusses the relationship between the Declaration of Independence and the Constitution. Have students read both documents and write a paragraph on how the purposes in the Preamble compare to the discussion of government in the second paragraph of the Declaration of Independence. (The Declaration sets forth the end of government; the Constitution creates the structures by which the Constitution will fulfill the promises of the Declaration.)

Discussion Questions

1. How does the Preamble show that the Constitution is different from the Articles of Confederation? (The Articles of Confederation tied the states together only loosely, but the Preamble represents the states as a united body through the phrase “We the People.” The Preamble also places the political strength of the government with the people, which differs from the Articles of Confederation.)
2. What does the goal to “secure the blessings of liberty to ourselves and to our posterity” reveal about how the Framers thought of the Constitution? (This statement reveals that one of the major goals of the Constitution was to secure liberty, or the personal rights of individuals, for all the generations to come.)

Emoluments Clause — Article I, Section 9, Clause 8

_Essay by Robert Delahunty (pp. 166–167)_

The Constitution creates a republican government. James Madison commented in _The Federalist_ No. 39 that republican governments were rare: They existed in Holland, Poland, and Venice in attenuated forms. The existence of a genuinely republican government with republican institutions was unique to America. The Framers crafted institutions and drafted specific clauses, such as the Emoluments Clause and the State Title of Nobility Clause, to ensure that the American Republic would succeed.

The Emoluments Clause forbids both the United States from awarding titles of nobility and public officials from receiving either titles or similar advantages from a foreign power without the consent of Congress. Giving people lifelong titles of nobility is a characteristic of aristocracies, not republics. At the time, kings would customarily bestow expensive gifts on ministers of other countries who had visited them and signed treaties. The Emoluments Clause protected the republican character and American political institutions from such corrupting foreign influences. The Emoluments Clause has never been litigated, but it has been interpreted and enforced through court opinions.

**Before You Read**

Point out that one meaning of the word “emoluments” is “advantages.” _Ask:_ What are some advantages enjoyed by kings and queens? (Answers will vary. Students may say that they are in a higher social class than everyone else and have greater privileges than everyone else. They are born into wealth, live extravagantly, and are entitled to servants.)

**Active Reading**

Explain that titles, such as those forbidden by the Constitution, indicate a rigid class structure entered into upon birth. For example, some individuals are born into the monarchy, while others might be born into the peasant class. _Ask:_ Why does the Constitution forbid titles? (The American justice system is based on equality before the law. Formal recognition of distinctions based on class, race, or title would undermine republican government and the justice system.)
Active Reading

Ask: Why does the Constitution require Congress’s consent when an official receives a title or gift from a king or other world leader? (Requiring Congress to consent to the receipt of these gifts informs Congress about the gifts, prevents the likelihood that these gifts are mere bribes, and guards the republican character of America.)

Discussion Question

Point out that Delahunty quotes David Ramsey, an 18th century historian, as saying that equality is the “life and soul” of republicanism. Ask: What are some ways that the United States government tries to treat all people equally? (Answers will vary. Examples: the law protects everyone equally. All people have certain due processes. Citizens have the right to vote.)

State Title of Nobility — Article I, Section 10, Clause 1

Essay by Robert Delahunty (pp. 175–176)

While the Emoluments Clause forbids the federal government from granting titles of nobility, Article I, Section 10, Clause 1 forbids state governments from granting such titles. Together, these clauses help to maintain the republican character of the United States government.

The Articles of Confederation prohibited Congress and the states from awarding titles of nobility. Even before the Articles of Confederation, however, states had renounced the power to grant such titles. Thus, prohibiting state titles of nobility was not controversial.

Make a Real-Life Connection

Provide students with some examples of noble titles. These include prince, knight, king, queen, duke, duchess, count, and princess. Ask: Can you think of some examples of people who have a noble title in their names? (Answers will vary.) Where are these individuals from? (Answers will vary. Help students reach the conclusion that all people mentioned are from countries other than America.) What does this tell you about noble titles and America? (America is a republican government. It does not pick its officers according to a hereditary bloodline. It does not award titles, and her citizens do not receive titles.)
Active Reading

Ask: Where did the idea that states should not grant titles of nobility appear before it was made part of the Constitution? (The Articles of Confederation prohibited the states from granting titles of nobility.) How is the American republican form of government exceptional compared to other republics? (Republican governments were uncommon before the French Revolution. They were found in Holland, Poland, and Venice in attenuated and precarious forms. America created republican institutions based on republican principles.)

Guarantee Clause — Article IV, Section 4

Essay by Robert G. Natelson (pp. 282–284)

The Guarantee Clause makes certain guarantees to the states. It guarantees states a republican form of government and protection from foreign invasion. The Articles of Confederation did not guarantee a republican form of government. Delegates debated the meaning of republican government and agreed on three criteria, the absence of any one of which would render a government unrepublican: popular rule, no monarch, and rule of law.

Popular rule means that political decisions are made by a majority of voting citizens. Citizens can act either directly or through representatives, but in either mode, the sovereign is accountable to the people. The Framers saw pure democracy as inconsistent with republican government. A pure democracy lacks magistrates; instead, the mob makes all decisions, including executive and judicial ones.

Monarchy is incompatible with republican government. Under the condition of no monarchy, for instance, the state executive cannot become tenured and serve for life.

The rule of law requires that the government and the governed alike be equally subject to the law and equally protected by the law. The rule of law means a formal, regular process of law enforcement and adjudication. The laws apply to the government and the governed alike. Moreover, the rule of law implies that there are certain standards to which specific laws and lawmaking must conform. For instance, bills of attainder and ex post facto laws are incompatible with the rule of law in a republican government.

If the citizens of a state think that their government is no longer republican, they must seek relief in Congress rather than the courts. The Supreme Court has noted that this clause does not present a justiciable question; that is, it is not a question that the courts may address or settle.
Before You Read

Ask: What is a guarantee? (a promise) What are some guarantees that a government would make to its people? (Responses may vary. Students may say that government protects its people from foreign invasion and treats people equally under the law.)

Active Reading

Help students understand how a republican government differs from a pure democracy and a monarchy. Point out that a pure democracy lacks magistrates. This means that the mob makes all decisions, including executive and judicial ones. Ask: Why is this dangerous? (The people who make up the majority would make all decisions. The majority could deny the rights of the minority.) Point out that the absence of a monarchy was a requirement of a republican government. Ask: What is the difference between a monarchy and a republic? (In a monarchy, the ruler holds power for life. A ruler who has lifetime tenure has little incentive to rule justly or in the people’s best interest, because the people would have no check on him. Elections are the chief mode to ensure accountability. In a republic, the people can remove their representatives if they fail to perform the duties of their offices properly.)

Write About It

Your book mentions that the rule of law prevents certain types of laws: ex post facto laws and bills of attainder. This will be discussed in greater detail in Lesson 8. Have students research the meaning of an ex post facto law and bills of attainder and provide a historical example of each. (Ex post facto laws are laws that make something illegal after the fact. Bills of attainder are laws directed at one person or at groups of persons. These laws do not accord with the rule of law, because the rule of law requires that laws be general rules of action, not retroactive punishments of past behavior or narrowly defined acts that do not apply to everyone. Examples will vary.)

Ratification Clause — Article VII, Clause 1

Essay by Charles Kesler (pp. 298–301)

The Ratification Clause formally accepted the Constitution as a replacement for the Articles of Confederation. This was a bold decision because the original purpose of the Constitutional Convention was to revise, not replace, the Articles of Confederation.

More significantly, the Framers required popular conventions of nine states to ratify the Constitution instead of relying on Congress, state legislatures, or the cumbersome procedures of the Articles of Confederation. The Constitution’s ratification
process was a more republican one. First, the Constitution would have obtained the consent of the people rather than that of the state legislators. Second, requiring unanimous consent would be unrepublican; if 12 states approved but one rejected the constitution, the minority would effectively rule the majority.

The Anti-Federalists opposed the ratification process of the Constitution. They claimed that the Articles of Confederation did not need popular or majority ratification because the document was a treaty and not a constitution. James Madison explained that any breach in one article in a treaty frees the other parties from having to comply with the treaty. He implied that state governments’ actions had already violated the terms of the Articles of Confederation; therefore, there was no need to abide by the document’s ratification procedure. In a union of people under a constitution, actions that oppose the constitution are invalidated, and there is no similar ability to withdraw from the pact.

The Constitution applied to all states within the Union uniformly. Those states that ratified the Constitution would need to amend their state constitutions to comply with it, but the people of the United States could not demand change in states that chose not to ratify the Constitution. However, allowing the Constitution to go into effect with the ratification of nine states ultimately encouraged the rest of the states to ratify the Constitution.

Before You Read

Ask students to think about the word “ratification.” Explain that when something is ratified, it is formally accepted. Tell them that the purpose of the clause was to formally accept the Constitution and replace the Articles of Confederation. Read aloud Article VII. Ask: Do you think everyone agreed with this article? Why or why not? (Students should say that not everyone agreed. One state did not participate in the Constitutional Convention.)

Write About It

To ensure understanding, have students write a few sentences paraphrasing Madison’s argument in Federalist No. 40. Have them share their sentences with a partner. (Sample answer: In all important governmental changes, past procedures should not be the primary goal, because strictly adhering to past procedures may harm the larger purpose of securing the liberty and happiness of the people.)
Active Reading

Point to Madison’s distinction between a treaty and a constitution, discussed on pages 299–300. Ask: What makes a constitution different from a treaty? (In a treaty, there are no questions of constitutionality. If one party breaches an article of a treaty, then the other parties no longer have the obligation to comply with the treaty. In a constitution, actions that oppose the constitution are invalidated, and there is no similar ability to withdraw from the pact.)

Discussion Questions

1. Why is it important to have decisions made on the basis of majority approval instead of unanimous approval? (Unanimous approval might never be achieved; allowing majority approval prevents the tyranny of the minority, where one state in withholding its approval could prevent the greater security and happiness of the other 12 states.)

2. Kesler explains that one of the purposes of Article VII was to encourage the states that did not ratify the Constitution to come aboard. How do you think Article VII does this? (Students may say that the states that did not ratify the Constitution may have worried about their safety and prosperity without it. Not wanting to be isolated, they would therefore officially become part of the United States.)

Attestation Clause — Article VII, Clause 2

_Essay by Matthew Spalding (pp. 301–302)_

The Attestation Clause is the final clause of the Constitution of 1787. It was written immediately before the delegates signed their name to the document.

When the Convention reconvened on September 17, 1787, Benjamin Franklin delivered an address endorsing the Constitution even with its perceived imperfections. Delegates did not sign on behalf of their particular states; they simply signed their names, which was an expression of unanimity. William Jackson, although not a delegate, signed to attest to the delegates’ signatures.

As Matthew Spalding explains, the way in which the Constitution was dated—“the Seventeenth Day of September in the Year of our Lord” 1787, and “of the Independence of the United States of America the Twelfth”—uniquely situates the Constitution in Western civilization and American history. Along with the Constitution, only the Articles of Confederation and the Northwest Ordinance are dated according to the “Year of Our Lord” and the anniversary of the Declaration of Independence. By choosing to date the Constitution in this way, the Framers situated the document in context of the religious tradition of Western civilization and linked the Constitution to the principles articulated in the Declaration of Independence.
Check Understanding

To ensure students’ understanding, ask: How was the signing of the Constitution different from the signing of the Articles of Confederation? (The signatures of the delegates signing the Constitution were grouped by state, but they did not sign their names as representing their states as was done on the Articles of Confederation. This suggested unanimity.)

Active Reading

Help students understand the meaning of the words “of the Independence of the United States of America the Twelfth.” Explain that “the twelfth” refers to when the Declaration of Independence was signed: July 4, 1776, 12 years prior to the Constitution.

Discussion Questions

1. What is the relationship between the Constitution and the Declaration of Independence? (The Declaration of Independence establishes ends or purposes of government—the principles upon which governments are made. The Constitution creates the institutions or arrangements of government by which citizens expressed their consent, assured their safety, secured their rights, and otherwise governed themselves in light of the community’s highest purposes as described in the Declaration of Independence.)

2. Benjamin Franklin said he endorsed the Constitution despite its imperfections. Why do you think the Framers did not try to fix these imperfections? (Answers may vary. Students may say that the Constitution was as good as it could be at that time and that no document is perfect.)

Check Understanding

Have students complete the following assessment to check their understanding of Lesson 2, Part 1. Review any material for questions they have missed. Short Answer: Write your answer to each question.

Multiple Choice: Circle the correct response.

1. According to the discussion of the Guarantee Clause, one of the key features of a republican government is that it does not have a
   a. Supreme Court.
   b. monarch.
   c. unicameral legislature.
   d. strong federal government.
2. To become the plan for government for the United States, the Constitution had to be ratified by
   a. all states
   b. nine states.
   c. 11 states.
   d. 12 states.

3. The only state that did not participate in the Constitutional Convention was
   b. Virginia.
   c. New Hampshire.
   d. Rhode Island.

Fill in the blank: Write the correct word or words in each blank.
1. In Article IV, Section 4, the Guarantee Clause assures the states protection from ____________________ and also guarantees ____________________. (foreign invasion and domestic violence, “a Republican Form of Government”)
2. A pure democracy had no ______________. (magistrates)
3. Where the signers subscribed their names, the states are listed in ______________ order. (geographical)
4. Unlike the Articles of Confederation, the Constitution established a strong ______ government to protect the citizens. (federal)
5. The Preamble stresses that ultimate political authority lies with the people, not the states, by starting with the phrase ______________. (“We the People”)
6. ______________, the secretary of the Convention, signed to attest, or authenticate, the delegates’ signatures. (William Jackson)

Short Answer: Write out your answer to each question.
1. Why did Patrick Henry object to the Preamble? (Patrick Henry thought that since the Constitution failed to list states, its intention might be to form a consolidated government.)
2. Who signed the Constitution to attest to the delegates’ signatures? (William Jackson)
3. Who composed the Preamble? (Gouverneur Morris)
4. What are the six purposes of the Constitution, as stated in the Preamble?
   • to form a more perfect union
   • establish justice
   • insure domestic tranquility
   • provide for the common defense
   • promote the general welfare
   • secure the blessings of liberty to ourselves and our posterity

5. What was the purpose of the Emoluments Clause? (to shield the republican character of the United States against corrupting foreign influences)

6. During the debates over ratification of the Constitution, what were the three criteria of republicanism under the Guarantee Clause?
   • popular rule (majority of voting citizens)
   • that there be no monarch
   • rule of law

7. Which was the ninth state to ratify the Constitution? (New Hampshire)

**True / False: Indicate whether each statement is true or false.**

1. The prohibition on federal and state titles of nobility was designed to affirm and protect the republican character of the American government. (True)

2. The Preamble was placed in the Constitution as an afterthought. (True)

3. Article VII was the last and shortest of the Constitution’s articles. (True)

4. Article VII’s bold dismissal of the Articles of Confederation’s rule of unanimous approval emphasized the break from the Articles to a Constitution as supreme law of the land. (True)

5. The Emoluments Clause has been in court extensively. (False. To our knowledge, the Emoluments Clause has never been litigated.)

6. The Founders intended to create a pure democracy. (False)

7. All the Delegates signed the Constitution (False. Three Delegates did not sign.)
Part 2:
The Supremacy of the Constitution

Debt Assumption Clause
Article VI, Clause 1

Supremacy Clause
Article VI, Clause 2

Oaths Clause
Article VI, Clause 3

No Religious Test
Article VI, Clause 3

Debt Assumption — Article VI, Clause 1

Essay by Jeffrey Sikkenga (pp. 289–291)

To finance the War of Independence, American states and the Continental Congress sold bonds to anyone who would buy them, leaving the new country in debt. During the Convention, delegates considered a proposal giving Congress the power to discharge the debts incurred by the states and the previous Congress. Since this debt was incurred before the signing of the Constitution, a question arose: Would the new government necessarily inherit the obligations of the previous government? There was also a related question: Should Congress assume this debt or the states retain it?

Under Article XII of the Articles of Confederation, Congress was liable for “monies borrowed and debts contract by” the old Continental Congress. Thus, the Articles provided precedent for the new government to inherit the debts incurred under the previous form of government. Elbridge Gerry objected that under the proposed wording, the new Congress would have the power but not the obligation to pay back the debt. Edmund Randolph agreed that without the explicit power enumerated in the Constitution, the new government did not have the authority to pay off the previous debts.

James Madison, however, disagreed. He argued that the new government had the obligation to pay the debts from the previous government and that this obligation existed whether or not the Constitution empowered the new government to pay. Furthermore, states did not have the power to engage in external affairs, which included the power to repay foreign bondholders. Thus, the new national government would inherit the power to repay foreign bondholders directly from the Articles and would not need an explicit grant of power from the new Constitution. In The Federalist, Madison maintained that the Debt Assumption Clause was not a legal or constitutional necessity; rather, it was included to satisfy foreign creditors of the United States. Ultimately, the new federal government fulfilled the obligations inherited from the Articles of Confederation without serious constitutional controversy.
Before You Read

Ask: What is debt? (money owed) How do people get into debt? (They borrow money that they cannot immediately pay back.)

Active Reading

Tell students that the War of Independence was the American Revolution, which lasted from 1775 to 1783. Explain that this war was between Great Britain and the 13 British colonies that had settled in North America. To understand why the colonies severed ties with Britain, have the students read the Declaration of Independence, focusing particularly on the list of grievances.

Supremacy Clause — Article VI, Clause 2

Essay by Gary Lawson (pp. 291–294)

The Supremacy Clause clarifies that above all else—above state law, federal laws, and the state constitutions—is the Constitution of the United States. The clause applies to all legal interpreters including Members of Congress, the President, federal officials, federal judges, state court judges, and other state officials. While both federal and state governments have power to enact laws, there must be a mechanism to determine which law applies in the event of a conflict. Under the Supremacy Clause, national laws made in pursuance of the Constitution take priority over any state acts that conflict with national law. This clause is not a grant of power; it specifies how to resolve conflicts.

At the Constitutional Convention, James Madison proposed congressional power to veto state laws. However, the Convention repeatedly rejected proposals for a federal veto power over state laws, seeking to reduce conflict between state and federal governments. The Convention accepted the Supremacy Clause in its final form (proposed by Anti-Federalist Luther Martin) without much dissent.

The Supremacy Clause’s historical context and text still leave several questions unanswered. For example, what is a conflict? When reformist legislation shifted from the states to the federal government during the New Deal, the Supreme Court began to fashion rules to try to determine when there is a genuine conflict. Generally, federal law “preempts” state law when Congress intends to do so or when Congress passes broad legislation that is intended to “occupy the field” on a certain issue. Additionally, a conflict can result when it is impossible to comply with both a state law and a federal law or when a state law obstructs compliance with federal law. However, to protect states’ police powers against federal encroachment, the Court has noted that federal law does not preempt state law unless Congress clearly intends that the federal law do so.
The Supremacy Clause is often seen as the source of the principle that states cannot regulate or control federal activities. In *McCulloch v. Maryland* (1819), Chief Justice John Marshall declared that supremacy allowed the federal government to “remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their influence.” While the federal government can prevent states from interfering with federal operations, this does not mean that the Supremacy Clause is the source of Congress’s power to protect federal operations. The basis of Congress’s powers is the constitutional enumeration of powers, not the Supremacy Clause.

Finally, the Supremacy Clause differentiates treaties from laws: that is, treaties made “under the Authority of the United States” and federal laws made “in pursuance” of the Constitution. This language ensured that treaties made by the United States prior to ratification of the Constitution take precedence over conflicting state laws. This does not, however, mean that treaties are “supreme” if they are not pursuant to the Constitution. Treaties that are properly executed are a part of the law of the United States and are on par with other federal laws.

**Before You Read**

Point out that each state has its own constitution and laws governing the state. It is possible that state law will differ from federal law. **Ask: What happens when a state law is in conflict with a valid federal law? Which law applies?** (The federal law will trump the state law.)

**Active Reading**

Read about the first strategy for resolving state and national conflict on page 291. It states that one way to avoid conflict is to give each government exclusive jurisdiction over a respective sphere. **Ask: Do you think this would work? Why or why not?** (Most students will say no, that it won’t work because some overlap between state law and federal law is inevitable.)

**Check Understanding**

Explain that the Supremacy Clause represents the Framers’ vision that the United States needed a strong but limited federal government. **Ask: How does the Supremacy Clause both give the federal government power and limit how that power can be used?** (Sample answer: The Supremacy Clause gives the Constitution supreme authority over state laws, but the Constitution allocates power to the executive, the legislature, and the courts in such a way that the document ultimately rests on the will of the people, who may in turn amend the document.)
Oaths Clause — Article VI, Clause 3

Essay by Matthew Spalding (pp. 294–296)

The primary significance of the Oaths Clause is that the oaths taken by those who hold office in the United States—the President, Members of Congress, federal judges—are oaths not to a king or ruler, or even to an executive or to Congress, but to the United States Constitution. The clause is a solemn reminder that the duty to uphold the Constitution is not the exclusive or final responsibility of the judiciary, but rather is shared by Congress and the President (per Article II, Section 1) as co-equal branches of the United States government.

While there was no oath required in the Articles of Confederation, Edmund Randolph proposed, as part of the Virginia Plan at the Constitutional Convention, that the legislative, executive, and judiciary powers be bound by oath to support the articles of the Union. Some delegates thought that it interfered with the power of states to police activity within their borders. However, the majority of delegates argued that the Oaths Clause was needed to ensure that political actors would uphold the Constitution at all times. The Oaths Clause in its final form applies to all members of the state and national governments.

The Clause’s declaration to “support the Constitution” is also significant. Members of Congress do not assume their office until they take the oath. John Marshall invoked the Oaths Clause as the basis of judicial review because it ensured that judges put the tenets of the Constitution first in their judgments. The Oaths Clause has also placed a personal responsibility on all members of the legislature to act in a way that is in accordance with the tenets of the Constitution.

The very first law passed by the House of Representatives concerned taking an oath to the Constitution, and under current federal law, officials in the federal government and state governments continue to swear to support the Constitution.

Before You Read

Ask: What is an oath? (a pledge or promise) What are some oaths that people take? (Answers will vary. People swear to tell the truth in court; physicians take an oath to do what is in their patients’ best interest.)

Active Reading

Ask: Spalding says that the Oaths Clause helps to fulfill the Framers’ plan to integrate the states into the functions of the federal government. How does state officials’ taking an oath to uphold the Constitution make them more involved in the federal government? (If they are bound to follow the Constitution, then they are bound to exercise their broad powers in accordance with the Constitution. For instance, state officials would not attempt to make a treaty with another country.)
Work in Pairs

Pair up students and have them research an instance where the federal government has required specific oaths (for example, during the Revolutionary War). Have them write a summary of the oath and explain the reasons why such an oath was necessary.

Discussion Questions

1. How does the Oaths Clause show the balance of power among the branches of government? (All branches of the government are considered equal insofar as they all have an obligation to follow, support, and defend the Constitution. The Constitution is not the province of only one branch.)

2. What does the Oaths Clause reveal about the Framers’ perception of individual responsibility? (The Oaths Clause places a personal burden on each individual in public office to act in an appropriate manner and to uphold the principles of the Constitution at all times.)

Religious Test — Article VI, Clause 3

*Essay by Gerard V. Bradley (pp. 296–297)*

The clause banning religious tests for federal office further attests that, regardless of one’s religious affiliation or lack thereof, the Constitution is the supreme law of the land. Political obligations and religious affiliation are important, but in the end, political actors within the constitutional order must give complete loyalty to and solemnly pledge to support the Constitution of the United States. Article VI of the Constitution ensures that America’s legal system—especially the federal and state courts—is defined by and focused on the Constitution.

The Article VI ban on religious tests is the one explicit reference to religion in the unamended Constitution. According to the ban, federal officers cannot be subjected to a formal religious test to hold office. The ban applied only to federal officers, but states could impose religious tests on their officials—and they did (the modern Supreme Court has ruled that religious tests on the state level are unconstitutional). Such a religious test often required a person seeking office to be Christian or even a Protestant.

The No Religious Test ban was hotly debated during the debates on ratification of the Constitution. Some focused on the clause to support the objection that the Constitution was too secular. Some supported religious tests to ensure good character in office. But defenders of the Constitution argued that the religious test ban was necessary to support religious liberty and to enable the best citizens to serve in the national government. Ultimately, the Framers supported the ban on such a test and instead required an oath to the Constitution.
Active Reading

To ensure understanding, ask: To whom did the Religious Test Clause ban apply? (to those seeking federal office)

Make an Inference

Ask: Why do you think the Framers of the Constitution did not extend the ban to state officials? (Answers will vary. Students may note that a ban on state religious tests for office would have faced stiffer opposition. Some states had established churches too. Ultimately, the Founders left the possibility of such bans at the state level to be a matter for states to decide.)

Discussion Questions

1. What does the Religious Test Clause tell you about the Framers of the Constitution? (The Religious Test Clause shows that the Framers of the Constitution were concerned about protecting the rights of individuals to the free exercise of their religious faith.)

2. Why does the Religious Test Clause rarely serve as a focal point for debate in the judicial system? (The Religious Test Clause rarely appears in courts today because courts settle controversies using the First Amendment.)

Check Understanding

Have students complete the following assessment to check their understanding of Lesson 2, Part 2. Review any material for questions they have missed.

Fill in the blank: Write the correct word or words in each blank.

1. During the American Revolution, General George Washington required all officers to subscribe to an oath renouncing any allegiance ________________, and pledging their fidelity to the _________________.
   (to King George III, United States)

Short Answer: Write out your answer to each question.

1. What strategy did the Supremacy Clause use to deal with potential conflicts between the national and local governments? (It uses a conflict-of-laws rule that specifies that certain national acts take priority over any state acts that conflict with national law.)

2. What was the very first law passed by the first session of the House of Representatives? (“An Act to regulate the Time and Manner of administering certain Oaths”)
3. The original, unamended Constitution contains how many explicit references to religion? (one)

4. Why were the states in debt before the signing of the Constitution? (To pay for the War of Independence, the states and the Continental Congress sold millions of dollars in bonds.)

5. What did Edmund Randolph think about the new Congress assuming past debt? (He argued that the new government was bound only by the Constitution. Since this issue was not specifically addressed, the federal government was in the uncomfortable position of not having the authority to pay off the debt.)

6. What is the main purpose of the Supremacy Clause? (to resolve conflicts between national and state laws and maintain the primacy of the Constitution)

7. What does it mean when a federal law trumps a state law? (It means that federal law takes precedence over the state law.)

8. What is the main purpose of the Oaths Clause? (to ensure that officials are bound to the Constitution)

9. Give an example of someone who must swear to uphold the Constitution. (Answers will vary but may include any individual elected or appointed to public office, an office of honor or profit in the civil service, or uniformed services.)

10. Why did the Framers of the Constitution support the ban on religious tests to hold office? (They considered it an aspect of religious liberty.)

11. How did the states and the Continental Congress finance the War of Independence? (They sold millions of dollars in public bonds to soldiers, ordinary Americans, and investors in America and abroad.)

True / False: Indicate whether this statement is true or false.

1. The Oaths Clause helps to fulfill the Framers’ plan to integrate the states into the electoral, policymaking, and executive functions of the federal union, subject to the limits of the Tenth Amendment. (True)