**Reference Sheet 2020**

**Checks & Balances:**

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| **Legislative** | **Executive** | **Judiciary** |
| * **Override veto** ⅔ both houses * **Impeachment** (House) * Conviction of Impeachment (Senate) * **Advice and Consent** (**Senate**) on presidential **appointees** * Appropriations (budget) * Approves **budget** that president submits * **Declare War** * **Propose** Constitutional **Amendment** (⅔ both houses) * **Ratify treaties** (⅔ **Senate**) * Congress create/destroy federal agencies * Congress creates all courts under SCOTUS | * **Veto** power * Pocket veto * Pardon power * **Appoint federal judges** * **Submit budget** * **Executive order** to override Congressional legislation * **Propose treaties** * Recess appointments * Convene Congress together * Ask Congress to **propose law** | * **Judicial review** (reviews constitutionality of laws and Executive Orders) * **Appointments** for **life**/retire * Chief Justice presides over impeachment trial |

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| **Case** | **Principle/Clause** | **Holding & *SIgnificance*** |
| ***Marbury v. Madison*** *(1803)* | **Article III- Judicial Review** | The Supreme Court is **allowed to nullify** an **act of** the **legislative or executive branch** that violates the Constitution. ***Established judicial review*** |
| ***McCulloch v. Maryland*** *(1819)* | **Elastic Clause (Necessary and Proper Clause)/ Supremacy Clause** | **Established supremacy** of the US Constitution and federal laws over state laws. ***Affirmed national supremacy*** |
| ***Schenck v. United States*** *(1919)* | **1st Amendment**  **Free Speech** | Speech creating a “**clear and present danger**” is not protected. *You can’t yell “fire” in a crowded theater* (but remember…this case wasn’t about theaters or fire) |
| ***Brown v. Board of Education I*** *(1954)* | **14th Amendment**  **Equal Protection Clause** | Ordered schools **desegregated**, **overturned** separate but equal doctrine from **Plessy** v. Ferguson. *Raced based segregation is illegal*. |
| ***Baker v. Carr*** *(1961)* | **14th Amendment**  **Equal Protection Clause** | Established “**one man, one vote**” and opens door to courts to reviewing **redistricting** challenges *One person one vote* |
| ***Engle v. Vitale*** *(1962)* | **1st Amendment**  **Establishment Clause** | **Schools** cannot sponsor religious activities. **No** **state sponsored prayer**. *First case to ban religious activities in public spaces* |
| ***Gideon v. Wainwright*** *(1963)* | **6th Amendment**  **Right to Counse**l | Guarantee of an **attorney for the poor** or indigent in **state cases**. ***Incorporated 6th amendment to states*** |
| ***Tinker v. Des Moines Independent Community School District*** *(1969)* | **1st Amendment**  **Freedom of Speech**  **Symbolic Speech)** | **Public school students** have the right to wear **black armbands** in school to **protest** the **Vietnam War** because it does not cause a disruption. ***Symbolic speech is protected speech – freedom of expression*** |
| ***New York Times Co. V. United States*** *(1971)* | **1st Amendment**  **Freedom of Press** | Establishes a “***heavy presumption against prior restraint***” **even** in cases involving **national security** |
| ***Wisconsin v. Yoder*** *(1972)* | **1st Amendment**  **Free Exercise Clause** | Cannot compel **Amish students** to attend school past the eighth grade  ***Expanded religious freedom*** |
| ***Roe v. Wade*** *(1973)* | 14th Amendment:  Due Process Clause and of **privacy** (establish through Griswold v. CT: 1st, 3rd, 4th, 9th amendments) | **Affirmed right to privacy**  *Protects the right of a woman to have an* ***abortion*** |
| ***Shaw v. Reno*** *(1993)* | **14th Amendment**  **Equal Protection Clause** | *Legislative* ***redistricting*** *must be conscious of* ***race***. BUT **can’t be overly racial in nature**. |
| ***United States v. Lopez*** *(1995)* | **Article I: Commerce Clause** | **Congress may not use** the **commerce clause** to make possession of a **gun in a school zone** a **federal crime**. ***Federalism case****: power taken away from federal government* - devolution |
| ***McDonald v. Chicago*** *(2010)* | **14th Amendment – “incorporation”**  Due Process clause, Privileges and Immunities Clause, **2nd amendment** | Right to keep and **bear arms for self-defense applies** **to** the **states**. ***Incorporated 2nd amendment*** |
| ***Citizens United v. FEC*** *(2010)* | **1st Amendment**  **Free Speech** | **Political spending** by **corporations**, associations, and labor unions is protected and **cannot be limited** by law; **Money = Speech**. ***Corporations are people****, too!* |

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| **Clause** | **Meaning** |
| **Commerce Clause**  Article I, Section 8 | Congress has the power to regulate “interstate commerce” (with foreign nations, among the several states, and with the Indian tribes) |
| **War Powers Clause**  Article I, Section 8 | Congress has the power to declare war |
| **Necessary & Proper Clause**  Article I, Section 8 | Congress has the power to make all laws “necessary and proper for carrying into execution the foregoing powers”. Also called the Elastic Clause. |
| **Ex Post Facto Clause**  Article 1, Section 9 | Prohibits Congress from punishing someone for a crime committed before it was actually a crime. |
| **Bill of Attainder Clause**  Article 1, Section 9 | Prohibits Congress from passing a law which singles out someone for punishment without a trial |
| **Full Faith & Credit Clause**  Article 4, Section 1 | Court rulings/records/government documents (such as drivers licenses, etc.) have to be recognized state to state |
| **Privileges & Immunities Clause**  Article 4, Section 2 | Have to enforce laws equally to citizens and non-citizens of your state |
| **Supremacy Clause**  Article 6 | Constitution and federal laws made under it are supreme law of the land.  In a fight between federal law and state/local law, federal wins |
| **Establishment Clause**  1st Amendment | Prohibits federal government from establishing a national religion. Extends to appearing to favor one religion over the other.  “Separation of Church and State” comes from this clause |
| **Free Exercise Clause**  1st Amendment | Prohibits federal government from interfering with the practice of one’s religion |
| **Takings Clause**  5th Amendment | Private property cannot be taken for public use without just compensation  Also called “eminent domain” clause |
| **Due Process Clause**  5th Amendment (fed)  14th Amendment (states) | No state shall deprive any person of life, liberty, of property, without due process of law. Used to justify Civil Liberties (Bill of Rights) & through the 14th amendment, incorporation of those to the states (which means that the states cannot have laws which restrict those liberties either) |
| **Equal Protection Clause**  14th Amendment | No state shall deny any person under US jurisdiction equal protection of the laws  Used to justify Civil Rights legislation |

**Foundational Docs:**

**Declaration of Independence – Thomas Jefferson**

* **Consent of the Governed** – “deriving their just powers from the Consent of the Governed” = **Popular Sovereignty**
* **Natural Rights** – “life liberty & pursuit of happiness” – inspired by Enlightenment Philosopher John Locke

**Articles of Confederation (1st Constitution)**

* **State’s had most sovereignty** – could tax, print money, sign treaties, tax imports
* **Weak central** government – **no power to tax, one branch** – Congress, **no way to enforce laws**, hard to pass laws 9/13 states, unanimous to pass amendments
* **Shays’ Rebellion** – demonstrated weakness

**Constitutional Convention:**

* **Great Compromise – Big states v. Small** (Senate = Equal Rep, House – Population), combo of Virginia & New Jersey Plans
* **3/5th Compromise – North vs. South** representation in congress – counting slaves

**Constitution:**

* **Article I: Congress** – enumerated powers + **necessary & proper clause**
  + **Enumerated Congress: taxes**, **borrow money, declare war, regulate interstate/international commerce,** rules on naturalization, **raise & support and army & navy,**
* **Article II: Executive – expressed/formal – execute the laws, Commander-in-Chief, state of the union, VETO!**
* **Article III:** vague- **lifetime tenure – that’s it!**
* **Article IV: states** – full-faith & credit clause,
* **Article V: amendments – 2/3s of Congress 3/4s of States – good connection to Federalism**
* **Article VI: Supremacy clause**

**Bill of Rights:**

1. **Freedom religion, speech, petition, assembly, & press**
2. **Right to bear arms**
3. Don’t worry (no quartering soldiers)
4. **No unreasonable search or seizure – remember “exclusionary rule”**
5. **No self-incrimination – right to remain silent – Miranda**
6. **Right to an attorney**, jury, speedy trial **- Gideon**
7. Don’t worry about it – jury in Civil trials
8. No cruel & unusual punishment – death penalty?
9. Rights or powers not listed belong to the people
10. All **powers not listed** are **reserved to the states – Federalism**

**14. State due process (incorporation), equal protection clause**

**19. Women’s right to vote**

**22. Two-terms for the president**

**24. Abolished poll taxes**

**Federalist Essays/Brutus’ Response – Purpose: Convince states to ratify Constitution & address concerns about tyranny**

**Federalist #10 – Madison**

* **“**Mischiefs of **Factions inevitable”**
* **Solution: large diverse republic –** no faction will gain monopoly on power
* **Model most associated with: pluralist theory of democracy**

**Brutus #1 – author unknown –** historians believe **Anti-Federalist** Robert Yates from NY

* **Purpose: express dangers of Constitution, strong central government, & tyranny**
* **Preference: governing** done at the **state / local level**
* **Factions – regional differences will make large republic unmanageable**
* **Supremacy Clause & Necessary and Proper Clause – “uncontrollable power”**

**Federalist #51 – Madison**

* **Checks & Balances / Separation of Powers**
* **“**If angles were to govern, neither external nor internal controls would be necessary”

**Federalist #70 – Hamilton**

* **Strong unitary executive (president)**
* **“Energy” – during times of emergency & war**
* **Unitary = accountability**

**Federalist #78 – Hamilton**

* **Judicial**
* **Lifetime tenure = political independence – “**truly distinct” from the other branches
* **“Least dangerous… lacking power of the sword & purse”**

**MLK Jr.’s Letter form a Birmingham Jail**

* **14th Equal protection clause? –** points out inequality in state laws
* **“Injustice anywhere is a threat to justice everywhere”**

**Federalism:** essential understanding “**dynamic distribution** of **power** **between** **national & state governments**”

**Federalism Constitutional Issues:**

* **10th Amendment – reserved powers**
* **Supremacy Clause –** see **McColloch v. Maryland**
* **14th Amendment “No state shall deny… due process… equal protection of the law”** – see: **Brown v. Board of Ed, Gideon v. Wainright, McDonald v. Chicgo**
* **Interstate Commerce Clause -** see **McColloch v. Maryland, US. V. Lopez, Civil Rights Act of 1964**
* **Necessary & Proper Clause -** see **McColloch v. Maryland**

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| **Federal – Expressed / Inherent** | **Concurrent - shared** | **Reserved - state** |
| **Declare war** | **Tax / Borrow money** | **Education** |
| **Treaties** | **Create laws** | **Marriage & licenses** |
| **Coin money** | **Maintain courts** | **Elections** |
| **Regulate trade** | **Enforce laws** |  |
| **Naturalization** |  |  |

**Fiscal Federalism:**

* **Grants in Aid** – **money** provided by **feds to the states**
  + **Categorical Grants** – Feds tell states how to spend money
  + **Block Grants** – States have more discretion in spending

**Federal Mandates:** orders states & local governments must implement

* **Unfunded mandates** – **states** or local governments **must fund** all or parts of the mandates **ex: Americans with Disabilities Act**

**Historical evolution:**

* **FDR’s New Deal 1930s** – federal programs to be implemented by state governments, increasing use of interstate commerce clause
* **Civil Rights Era** 1950s/60s - federal oversight into state elections, commerce, & unjust state laws (See Civil Rights Section)
* **Devolution Revolution 1980s** – Regan led effort – “new federalism” – shift power back to states – shrink federal programs
* **2000s** – mix –
  + **federal intrusion into education ex: No Child Left Behind,**
  + **US v. Lopez** – Commerce powers stretched too far
  + **State legalization** of **marijuana**

**3 Branches:**

**Legislative/Congress – Article I Constitution**

**Essential Understanding**: The **republican ideal** in the U.S. is **manifested in** the **structure and operation** of the legislative branch.

**Key Concepts:**

* **Bicameralism** – check on legislative process
* **“Oversight”** ­– **hearings/investigations** on **executive branch** & **bureaucratic** agencies
* **“Power of the Purse”** – check on executive & bureaucratic policies
* **Advice & Consent** – **Senate only** – **ratify treaties** & **confirm presidential appointments**
* **Committee system**
* **Power spread out or decentralized**
* **Gerrymandering**

**Enumerated Powers:**

* **Tax** (“raise revenue”) - Coining money / borrow money
* **Declare War / “Raise & support” military**
* **Regulate “interstate” and international commerce**
* **Necessary & Proper Clause** – stretched to **address** a **variety** of **economic**, **environmental,** & **social issues**

**Senate – equal representation for states (Great Compromise)**

* **Trial for impeachment**
* **Advice & Consent**
* **100 members less formal debate – Filibuster – Cloture vote, Senatorial Hold,**
* **Leader: VP** “President of Senate” – **tiebreaker vote**… **Real power: Senate Majority Leader**
* **6 – Year terms** – political stability
* **Constituency** – entire state – **less partisan?**

**House – based on population – only originally direct elected body**

* **Initiate taxes / revenue** (must be passed by Senate & signed by president)
* **“People’s House” – 2 Year terms – smaller districts = more partisan**
* **435 member strict rules on debate - House Rules Committee sets limits – Leader “Speaker of the House”**
* **Impeachment vote**

**Congress Continued:**

**Taking back power from President:**

* **War Powers Resolution 1973**
* **Budget Impoundment Act**

**Baker v. Carr –** reapportionment / redistricing “one man, one vote”

**Shaw v. Reno** – no racial gerrymandering

**Executive Branch / President – Article II of the Constitution:**

**Key Concepts:**

* **Electoral College – Elite theory?**
* **Historical Rising power**

**Expressed / Formal powers (in Constitution)**

* **Commander-in-Chief**
* Chief diplomat **– propose treaties, appoint ambassadors**
* **Veto** / Pocket Veto
* **Prepare Budget**
* State of the Union

**Enhanced “informal / inherent powers” (not in Constitution)**

* **Executive orders (bypass Congress)**
* **Executive agreements – treaties? (bypass Senate approval)**
* **Signing statements** – discretion in enforcing laws?
* **Bully pulpit –** enhanced use of media & State of the Union

**Federalist #70 – justification for single executive**

**22nd Amendment** – 2 term limit – attempt to check rising influence?

**Judicial Branch / Supreme Court – Article III**

**Essential Understanding:** The **design** of the **judicial branch protects** the **Supreme Court’s independence** as a branch of government,and the **emergence** and **use of judicial review remains a powerful judicial practice.**

**Key Concepts:**

* **Lifetime tenure / unelected – elite theory?**
* **Partisanship in approval process – “divided government”**
* **Does Executive have to enforce decision?**
* **Establishing precedent**
* **Judicial Activists**  - ex: Warren Court

**Federalist #78** – see foundational documents

**Judicial Review – not in Constitution – Established Marbury v. Madison**

**See Key SCOTUS decisions at beginning of guide!**

**The Bureaucracy – implements federal policies**

**Controversies:**

* **Write & enforce regulations, issue fines (unelected yet power of 3 branches?)**
* **Bureaucratic discretion** – ability to chose how to enforce federal laws / policies?
* **Iron Triangles**  - need funding from Congress – pass regulations favorable to campaign donors / lobbyists?
* **Presidential partisanship in appointment of department & agency heads? “Divided loyalty”**

**Other duties:**

* **Testifying before Congress**
* **Helping with Congressional legislation**

**Examples of Departments with discretionary & rulemaking authority:**

* **Department of Homeland Security**
* **Department of Education**
* **Environmental Protection Agency (EPA)**
* **Securities & Exchange Commission**

**Checks on Bureaucracy:**

* **Congressional oversight & power of the purse**

**Civil Liberties & Civil Rights: See Supreme Court Cases & Amendments - Plus**