**Balance of Power: Executive v. Legislative**

The Constitution

From: Newport Mesa Unified School District, 2015

**History Standards: Government 12.4.1**

Discuss Article I of the Constitution as it relates to the legislative branch, including eligibility for office and lengths of terms of representatives and senators; election to office; the roles of the House and Senate in impeachment proceedings; the role of the vice president; the enumerated legislative powers; and the process by which a bill becomes a law.

**CCSS Standards: Reading, Grades 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.

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.

3. Evaluate various explanations for actions or events and determine which explanation best accords with textual evidence, acknowledging where the text leaves matters uncertain.

4. Determine the meaning of words and phrases as they are used in a text, including analyzing how an author uses and refines the meaning of a key term over the course of a text (e.g., how Madison defines faction in Federalist No. 10).

6. Evaluate authors’ differing points of view on the same historical event or issue by assessing the authors’ claims, reasoning, and evidence.

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.

9. Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

**Guiding Question:** How, when and why does the legislature check the power of the executive? How do the differences/roles/functions in the Senate and House of Representatives impact access to the political process? How does the legislative process and legislative oversight illustrate the principle of checks and balances and separation of powers within American government?

**Overview of Lesson:**

\*REMOVE BRACKETED ANSWERS BEFORE ASSIGNING\*

Begin by asking students to do a quick write on the phrase “balance of power” – what does it mean, especially in the context of governance? Discuss with them the checks and balances that exist between the president and the legislative branch, according to the Constitution (you can have them search for the section or facilitate a close reading of the same). Break students into small groups or partnerships to go through the sources below and address the accompanying questions. Set a timer for 20 minutes. When it goes off, call quiet time and have students address the writing assignment as inidividuals.

Source 1: Confidential Message to Congress Regarding the Lewis and Clark Expedition, January 18, 1803

In 1803, Thomas Jefferson acted against his “strict constructionist” philosophy and made the Louisiana Purchase for fifteen million dollars—without the government mandate to do so. Following the act, he secretly requested money from Congress to fund the Corp of Discovery, which he received. In this letter, consider some of the reasons why Congress did not “check” his actions which likely exceeded his power as president.

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| "Gentlemen of the Senate, and of the House of Representatives:  "As the continuance of the act for establishing trading houses with the Indian tribes will be under the consideration of the Legislature at its present session, I think it my duty to communicate the views which have guided me in the execution of that act, in order that you may decide on the policy of continuing it, in the present or any other form, or discontinue it altogether, if that shall, on the whole, seem most for the public good….  "The Indian tribes residing within the limits of the United States, have, for a considerable time, been growing more and more uneasy at the constant **diminution** [reduction] of the territory they occupy… In leading them to agriculture, to manufactures, and civilization; in bringing together their and our settlements, and in preparing them ultimately to participate in the benefits of our governments, I trust and believe we are acting for their greatest good. At …trading houses we have pursued the principles of the act of Congress, which directs that the commerce shall be carried on liberally, and requires only that the capital stock shall not be diminished. We consequently undersell private traders, foreign and domestic, drive them from the competition; and thus, with the good will of the Indians, rid ourselves of a description of men who are constantly endeavoring to excite in the Indian mind suspicions, fears, and irritations towards us. …  The interests of commerce place the principal object within the constitutional powers and care of Congress, and that it should incidentally advance the geographical knowledge of our own continent, cannot be but an additional gratification. The nation claiming the territory, regarding this as a literary pursuit, which is in the habit of permitting within its dominions, would not be disposed to view it with jealousy, even if the expiring state of its interests there did not render it a matter of indifference. The appropriation of two thousand five hundred dollars, "for the purpose of extending the external commerce of the United States," while understood and considered by the Executive as giving the legislative sanction, would cover the undertaking from notice, and prevent the obstructions which interested individuals might otherwise previously prepare in its way." |

What is happening to Indians and how are they responding?

[Their land are diminishing and they are growing uneasy]

What does Jefferson suggest should be done? [ set up trade with Indians] Who does he say has power to establish trade? [Legislature]

What would be the benefits of this? [appease them, beat competition for trade and learn geography of new land.

Why do you think Congress would support this? [because it would expand commerce and the nation]

Source 2: Testimony of John Sherman, 1868

March 2, 1868 Andrew Johnson was impeached by the House of Representatives. Here Senator John Sherman gives reasons for Johnson’s impeachment.

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| Instead of cooperating with Congress, by execution of laws passed by it, he has **thwarted [stopped]** and delayed their execution, and sought to bring the laws and the legislative power into contempt. Armed by the Constitution and the laws, with vast powers, he has neglected to **protect loyal people** in the rebel States, so that assassination is organized all over those States, as a political power to murder, banish and maltreat loyal people, and to destroy their property. All these he might have **ascribed [explained by]** to alleged want of power, or to difference of opinion in questions of policy, and for these reasons no such charges were exhibited against him, though they affected the peace and safety of the nation. When he adds to those political offenses **the willful violations of a law by the appointment of a high officer during the session of the Senate, and without its consent, and with the palpable [plain to see] purpose to gain possession of the Department of War**, for an indefinite time, a case is made not only within the express language of the law a high misdemeanor, but one which includes all the elements of a crime, to wit: **a violation of express law, willfully and deliberately done with the intent to subvert the constitutional power of the Senate**, and having the evil effect of placing in the hands of the President unlimited power over all the officers of the Government.  The power of impeachment of all the officers of the Government, **vested [held]** in the Senate of the United States, is the highest trust **reposed [held]** in any branch of our Government. Its exercise is **indispensable at times to the safety of the nation, while its abuse, especially under political excitement, would subordinate the executive and the judiciary to the legislative department.** The guards against such a result are in the love of justice inherent in the people who would not tolerate an abuse of power, and also in the solemn appeal each of us have made to Almighty God to do impartial justice in this cause…. |

Why does Sherman support charges of impeachment against Andrew Johnson?

[for preventing the execution of laws passed by congress which resulted in murder of loyal Americans in the South; but most of all for violating a law by appointing an officer the Department of War when he did not have the power to do so]

Why is just and fair impeachment charges so important according to John Sherman? [they are necessary for the safety of the nation; but if abused would elevate the judiciary above the executive and judiciary]

Source 3:

Gulf of Tonkin Resolution Congressional Joint Resolution, August 7, 1964

The North Vietnamese Navy, in violation of the Charter of the United Nations and of international law, have deliberately and **repeatedly attacked United States** naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace; and

These attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and other free the nations; and

The United States is assisting the peoples of Southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way:

Therefore the Senate and House of Representatives of the United States of America have decided that we approve and support the determination of the President, as Commander in Chief, to take all **necessary military actions** to combat Communist forces and to prevent further aggression.

The United States is prepared, as the President determines, to take all necessary steps, **including the use of armed force**, to assist any member of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

What does Congress give the President power to do in this resolution? Why? [“take all necessary actions” and to “use armed force”; because the North Vietnamese have “deliberately attacked” the United States and waged a campaign against peoples in Southeast Asia]

The Constitution says that “Congress shall have power: to declare war, …raise and support Armies” (article 1 section 8) and that the President “shall be Commander-in-Chief of the Army and Navy of the United States” (article 2 Section 8). Do we see this division of power in the resolution? Who is given power to do what? [no—Congress is allowing the President to take military action without declaring war.]

Writing Assignment:

The sources above illuminate various historical moments when a “balance of power” question emerged between Congress and the President. Does the legislature always “check” the president? Why or why not? What might justify the exceptions for this responsibility?