Name_____

Date_____

Checking Power with Power

Part A. Read the selection and answer the questions that follow it.

> Long ago Horace White observed that the Constitution of the United States "is based upon the philosophy of Hobbes and the religion of Calvin. It assumes that the natural state of mankind is a state of war, and that the carnal mind is at enmity with God." Of course the Constitution was founded more upon experience than any such abstract theory; but it was also an event in the intellectual history of Western civilization. The men who drew up the Constitution in Philadelphia during the summer of 1787 had a vivid Calvinistic sense of human evil and damnation and believed with Hobbes that men are selfish and contentious. They were men of affairs, merchants, lawyers, planter-businessmen, speculators, investors. Having seen human nature on display in the market place, the courtroom, the legislative chamber, and in every secret path and alleyway where wealth and power are courted, they felt they knew it in all its frailty. To them a human being was an atom of self-interest. They did not believe in man, but they did believe in the power of a good political constitution to control him.[1]

Based upon this selection, mark each of the following statements true or false.

_____ 1. The founding fathers believed in the basic goodness of human nature.

_____ 2. The founding fathers represented the interests of the upper, rather than lower, classes.

_____ 3. Man's primary motive is self-interest.

_____ 4. The founding fathers believed that the legislature is the only branch of government they could trust completely.

_____ 5. The founding fathers believed in checking power with power to prevent abuse.

Use your answers to help you construct a statement summarizing the basic philosophy of the founding fathers.

[1]Richard Hofstadter, *The American Political Tradition and the Men Who Made It* (New York: Alfred A. Knopf, 1948), 3. Reprinted by permission of Alfred A. Knopf, Inc., New York.

Name_____

Date_____

Part B. Why did the makers of the Constitution provide "Filters" between the voters and the U.S. Senate and the presidency?

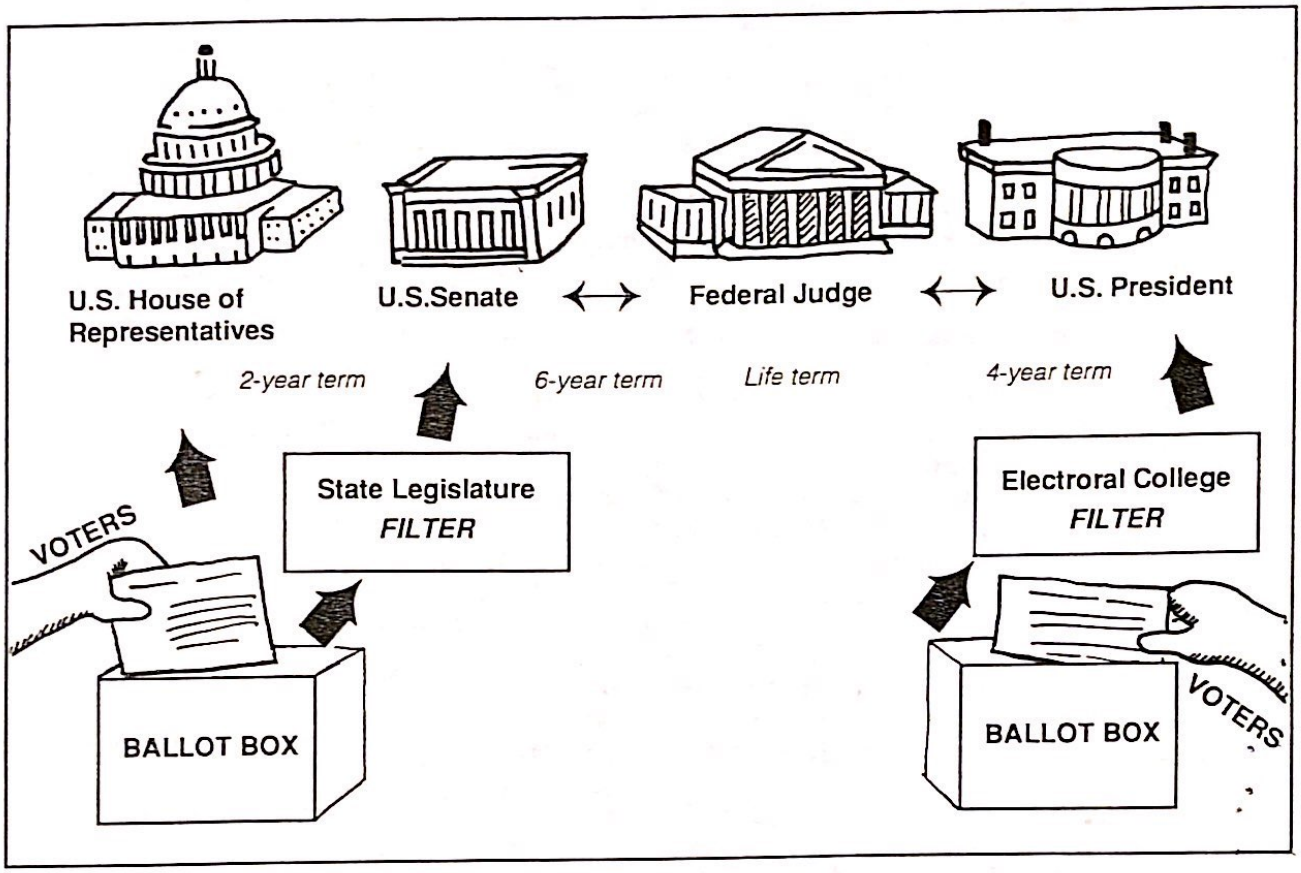

Fig. 4.1.

Refer to the chart to find answers to these questions.

1. Under the original Constitution, which was the only part of the national government directly elected by the people?

2. What change would be required in the chart to reflect the reality of the electoral process today?

3. What is the term of office of each of the following?

   a. House of Representative

   b. Senate

   c. President

   d. Supreme Court

Name_____

Date_____

4. What part of the government is most removed from control of the people?

5. Explain why this system makes it impossible to change the philosophy of government in one election.

Part C
System of Checks and Balances

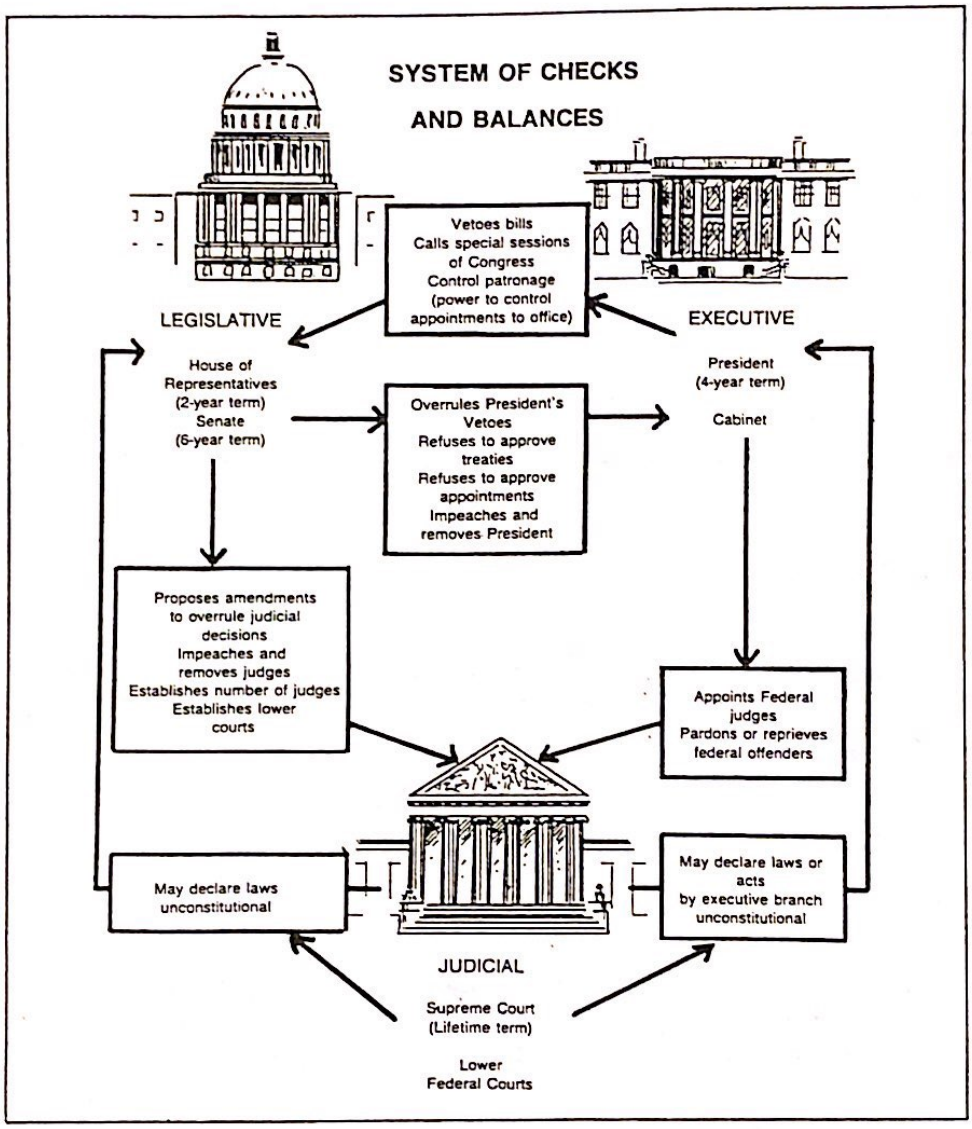

Fig. 4.2.

Refer to the diagram to answer the questions that follow.

Name_____

Date_____

1. What is the function of each branch of government?

   a. Legislative:

   b. Executive:

   c. Judicial:

2. List one check that limits power in each of the situations below:

   a. The president checks the power of Congress by

   b. The Congress limits the power of the president by

   c. The president checks the power of the Supreme Court by

   d. The Supreme Court limits the power of the president by

   e. The Supreme Court checks the power of Congress by

   f. Congress limits the power of the Supreme Court through

3. Explain the ways that this diagram illustrates how the Constitution prevents the concentration and abuse of power.

Part D. To demonstrate your understanding of the concepts in this lesson, answer the following questions.

1. James Madison once said: "Wherever the real power in a government lies, there is the danger of oppression. In our Government the real power lies in the majority of the community."[2] How does the Constitution reflect his concern?

2. John Adams once said: "Power naturally grows . . . because human passions are insatiable. But that power alone can grow which already is too great; that which is unchecked; that which has no equal power to control it."[3] How does the Constitution reflect his concern?

3. The authors of the *Federalist Papers* stated that when framing a government, the government must first be able to control the governed and also be able to control itself. To what extent were the founding fathers successful in implementing these goals?

4. What is the basic advantage of the system of checks and balances?

5. Why might some consider the system by the Constitution to be frustrating and compromising?

[2] Ibid., 3.
[3] Ibid.

Name_____

Date_____

The Living Constitution

Read the following methods describing three different ways that the Constitution has been changed over the years to meet the changing wants and needs of the people. Answer the questions that follow each method.

Method A: Amendment

The Formal Amendment Process

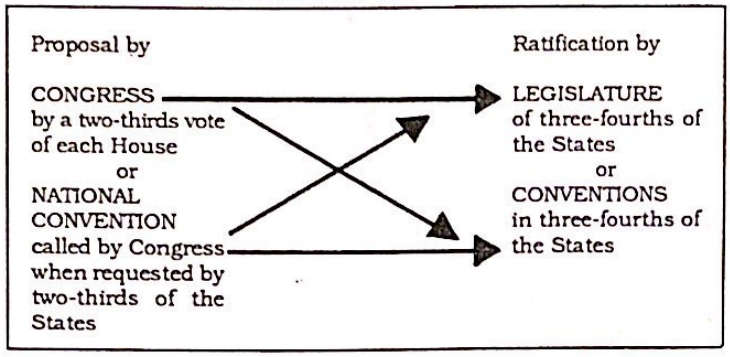

Fig. 5.1. From *Magruder's American Government*, 1984, revised by William A. McClenaghan. © Copyright 1984 by Mary Magruder Smith. Reprinted by permission of the publisher, Allyn & Bacon, Inc.

The Formal Amendment Process

1. How are amendments proposed?

2. How are amendments ratified?

3. How many states must approve an amendment?

4. How many times has this process been used to date?

5. Why is the amendment process easier under the constitution than it was under the Articles of Confederation?

Name_____

Date_____

Method B: Changing Supreme Court Interpretations

This case turns upon the constitutionality of an act of the General Assembly of the State of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races . . . .

The first section of the statute enacts "that all railway companies carrying passengers in their coaches in this State, shall provide equal but separate accommodations for the white and colored races . . . .

The object of the [Fourteenth] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced . . . .

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it . . . . The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals . . . . Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.[1]

Plessy v. Ferguson, 163 U.S. 537 (1896).

[1] Bernard Feder, *Viewpoints: USA* (New York: American Book Co., Division of Litton Ed. Publishing Inc., 1967), 332.

Name_____

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Mr. Chief Justice Warren . . . . In each of the cases, minors of the Negro race, through the legal representatives, seek the aid of the courts in obtaining admission to the public schools of the community on a nonsegregated basis. In each instance, they had been denied admission to school attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment . . . .

. . . The doctrine of "separate but equal" did not make its appearance in this Court until 1896 in the case of *Plessy v. Ferguson*, involving not education but transportation. American courts have since labored with the doctrine for over half a century . . . .

In the instant [present] cases . . . there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. Our decision, therefore, cannot turn the cases on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education . . . .

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

. . . To separate them [school children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone . . . .

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated . . . are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment . . . .[2]

Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

6. When did the Supreme Court hand down the decision in *Plessy v. Ferguson*?

7. What was the question on which the Supreme Court ruled?

[2] Ibid., 333.

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Date_____

8. What was the primary argument used by Homer Plessy, the plaintiff?

9. On what basis did the court consider Plessy's reasoning incorrect?

10. What was the decision of the Supreme Court?

11. In what way did the decision have an application broader than merely railway carriages?

12. When did the Supreme Court rule in the case of *Brown v. Topeka Board of Education.*

13. What was the question on which the Supreme Court ruled in the Brown case?

14. What was the argument of the plaintiff?

15. What was the court's ruling in the Brown case?

16. In what way did this decision change the meaning of the Constitution?

17. How might you account for the reversal of the 1896 decision?

18. What do the Plessy and Brown decisions tell you about the permanence of Supreme Court decisions as a way of altering the constitution?

19. Why do you think change on school segregation came through Supreme Court interpretation rather than an amendment?

Name_____

Date_____

Method C: Custom and Usage

Custom has also changed what, at least on the surface, seem to have been some clear intention of the framers. The Eighth Amendment forbidding "excessive bail" has not prevented courts from setting bail in serious offenses that is too high for the accused to raise. The constitutional statement that "the right of the people to keep and bear arms, shall not be infringed" (Second Amendment) has not stopped gun control laws in many communities. Although Congress has the right to declare war (Article II, Section 8), presidents have entered conflicts that looked very much like wars (Korea, Vietnam) without such a declaration. Customs also have been broken and reestablished by law. The custom that a president only serves two terms was first followed by Washington and cemented by Jefferson. Broken with much debate by Franklin D. Roosevelt in 1940, the custom was made law in the Twenty-second Amendment, adopted in 1951.

Custom is the most imprecise way the Constitution has changed, yet one of the most widespread. Many practices that have been accepted as constitutional are not actually mentioned in the document. The growth of political parties and the influence of party leadership in the government, the presidential nominating conventions, the breakdown of the electoral college, and the committee system in Congress are just a few customary practices not foreseen by the Constitution.[3]

20. List several changes in the meaning of the Constitution that have resulted from custom and usage.

21. How does the example of the Twenty-second Amendment suggest the popular acceptance of custom and usage?

[3] Gary Wasserman with Edmund Beard and Marsha Hurst, *Basics of American Politics* (Boston, Mass.: Little, Brown & Co., 1976), 42-43.