

CRISIS, CIVIL WAR, AND RECONSTRUCTION**Issues Connector: Checks and Balances**

The U.S. Constitution sets up three branches of government, each with specific powers. The powers are distinct and separate. Along with the separation of powers, the Constitution sets up a system of checks and balances, designed to keep the three branches of government reasonably equal in authority. This setup came from the intention of the Founding Fathers that no branch of the government have more power than the others. For example, they did not want the executive branch to have final authority like a monarch in England. Throughout the history of the nation, however, different branches have struggled for more power. The need for an individual branch to assume more authority has been supported in some instances and challenged in others.

Articles 1–3, Constitution, 1787

The first three articles of the Constitution establish and define the powers of the three branches of government. Article I deals with the legislative branch; Article II with the executive branch; and Article III with the judicial branch. Although the Constitution does not use the words “checks and balances,” it is clear that each of the branches has oversight over certain functions of the other branches. Some examples of checks and balances include the following: Congress passes legislation, but it cannot become law until the President signs it. The President appoints judges to the Supreme Court and other federal courts, but the Senate must approve of the appointments. The Supreme Court can decide if a law passed by Congress and signed by the President is constitutional or not. Supreme Court justices are appointed for life, but can be impeached by Congress.

Marbury v. Madison, 1803

The *Marbury v. Madison* decision was the first time that the Supreme Court declared a law unconstitutional. The case was brought by William Marbury, who had been appointed a justice of the peace by President John Adams. However, Adams left office and was replaced by Thomas Jefferson before Marbury assumed his position. Jefferson’s secretary of state, James Madison, refused to honor Marbury’s appointment, so Marbury sued under Section 13 of the Judiciary Act of 1789. The Court did not rule on Marbury’s petition; instead, it found that Section 13 of the Judiciary Act was unconstitutional because it gave the Court powers not granted in the Constitution. The major importance of *Marbury v. Madison* was that it established the concept of judicial review, whereby the Court has the power to declare acts of Congress unconstitutional. The decision affirmed the Court as an equal partner in government with the legislative and executive branches. It also established the court as the final arbiter on the Constitution’s meaning.

Johnson Impeachment: *Harper’s Weekly*, 1867

Andrew Johnson, a southerner, was elected Vice President under Abraham Lincoln in 1864. A few months later, Lincoln was assassinated, and Johnson became President. Johnson continued to push Lincoln’s ideas for the reconstruction of the South. At first, Congress supported Johnson’s ideas for Reconstruction, but soon Radical Republicans in Congress decided that Johnson was not going far enough to regulate,

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or “punish,” the South. In 1868, President Johnson was impeached on the grounds that he had violated the Tenure of Office Act. However, the real goal was for Congress to take control of Reconstruction from the executive branch. Johnson was not removed from office. The impeachment failed by a single vote.

Warren Court, 1960s

In the 1960s, the Warren Court—named for Chief Justice Earl Warren—exercised considerable power in American society. The Court made several controversial decisions supporting the rights of the poor, criminals, minorities, and other underprivileged groups. Two of its best-known decisions were *Gideon v. Wainwright* and *Miranda v. Arizona*. The concept of a court-appointed lawyer is common today, but wasn’t established until 1963 in *Gideon v. Wainwright*. This decision says that courts are responsible for assigning and paying an attorney for defendants who are too poor to afford their own. In 1966, *Miranda v. Arizona* ruled that police must inform suspects of their Constitutional right not to incriminate themselves (under the Fifth Amendment) at the time of arrest—that they have a right to remain silent and that anything they say may be held against them. Under the Warren Court, the judicial branch had one of its most active periods in United States history.

War Powers Act, 1973

A direct result of the Vietnam War, the War Powers Act of 1973 limits the power of the President to wage war without the approval of Congress. Although the power to declare war has always been controlled by the legislative branch, prior to the passage of the War Powers Act, the President could commit troops to a conflict indefinitely without a definite declaration of war or approval by Congress. The War Powers Act requires the President to consult with Congress before committing troops and to remove troops from combat if Congress has not approved the action within 60 days.

***Hamdan v. Rumsfeld*, June 29, 2006**

Salim Ahmed Hamdan, a prisoner at the U.S. Government prison at Guantánamo in Cuba, once worked as a driver for Osama bin Laden, the man believed to be responsible for the September 11, 2001 attacks on the World Trade Center and the Pentagon. In his suit against Defense Secretary Donald Rumsfeld, Hamdan claimed that the military tribunals set up to try prisoners at Guantánamo were not legal. President George W. Bush, Secretary Rumsfeld, and others have claimed that these special tribunals were necessary to protect the United States against terrorists. The Court disagreed and said that even though Hamdan is “a dangerous individual whose beliefs, if acted upon, would cause great harm and even death to innocent citizens,” the tribunals do not meet the requirements of the Geneva Convention, which provides international rules for the treatment of prisoners of war, nor the Uniform Code of Military Justice, which governs the U.S. military’s legal system. The Court rejected the executive branch’s argument that the tribunals were allowed under the President’s powers as commander in chief. With this decision, the Court declared that the executive branch had exceeded its constitutional authority.

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“All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. The executive Power shall be vested in a President . . . and . . . Vice-President chosen for the same Term. . . . 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.

—Articles 1–3, U.S. Constitution, 1787

“Nothing in the letter or the spirit of the Constitution or in the precedents squares with the heavy-handed and one-sided action that is so precipitously [abruptly] taken by the Court in the name of fulfilling its constitutional responsibilities.”

—Dissenting Opinion, *Miranda v. Arizona*, 1966

“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 [explain] and interpret that rule.”

—*Marbury v. Madison*, 1803

Checks and Balances

“The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities. . . . and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities.”

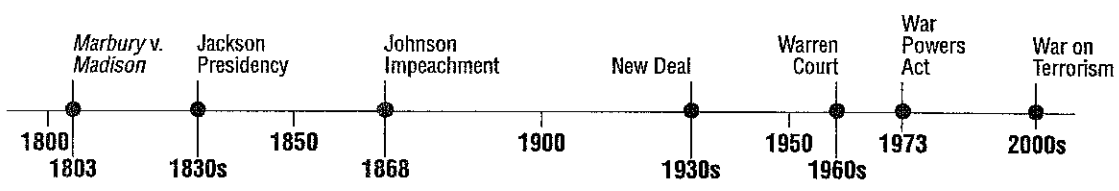
—*War Powers Act*, 1973

There is no doubt that the subject of reconstruction belongs properly to Congress. . . . But there is equally no doubt that the action of the President was at the time justified. . . . It was an assumption of power condoned by the conscious necessities of the situation.

—*Harper’s Weekly*, December 1867

“Hamdan does not challenge . . . the Government’s power to detain him. . . . But in undertaking to try Hamdan and subject him to criminal punishment, the Executive is bound to comply with the Rule of Law that prevails in this jurisdiction.”

—*Hamdan v. Rumsfeld*, June 2006



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Directions: Read the excerpts regarding the issue of checks and balances in the United States. Then answer the questions that follow.

1. What are the three branches of government as defined by the Constitution?

2. Why does the writer of the editorial from *Harper's Weekly* think Johnson's handling of Reconstruction was acceptable?

3. What does the author of the Dissenting Opinion in *Miranda v. Arizona* imply about the ruling?

4. According to the War Powers Act, what must the President do after committing troops to combat?

5. According to *Hamdan v. Rumsfeld*, what is required of the President and the executive branch?

6. **Draw Conclusions** What branch of the government do you think has assumed the most power in recent years? Why?
