DOWNLOAD PDF V. 1. THE INDIVIDUAL AND THE GOVERNMENT

Chapter 1 : individual rights | LII / Legal Information Institute

1. The Government's acquisition of Carpenter's cell-site records data brokers, without individual identifying information of the sort at issue here. While.

Etymology[edit] In the English language , the word "individualism" was first introduced, as a pejorative, by the Owenites in the late s, although it is unclear if they were influenced by Saint-Simonianism or came up with it independently. Although an early Owenite socialist, he eventually rejected its collective idea of property, and found in individualism a "universalism" that allowed for the development of the "original genius. Individual An individual is a person or any specific object in a collection. In the 15th century and earlier, and also today within the fields of statistics and metaphysics , individual means "indivisible", typically describing any numerically singular thing, but sometimes meaning "a person. From the 17th century on, individual indicates separateness, as in individualism. Individuation The principle of individuation , or principium individuationis, [15] describes the manner in which a thing is identified as distinguished from other things. It is a completely natural process necessary for the integration of the psyche to take place. Thus, the individual atom is replaced by a never-ending ontological process of individuation. Individuation is an always incomplete process, always leaving a "pre-individual" left-over, itself making possible future individuations. For Stiegler "the I, as a psychic individual, can only be thought in relationship to we, which is a collective individual. On a societal level, the individualist participates on a personally structured political and moral ground. Independent thinking and opinion is a common trait of an individualist. Ruth Benedict made a distinction, relevant in this context, between "guilt" societies e. Methodological individualism[edit] Methodological individualism is the view that phenomena can only be understood by examining how they result from the motivations and actions of individual agents. Becker and Stigler provide a forceful statement of this view: On the traditional view, an explanation of economic phenomena that reaches a difference in tastes between people or times is the terminus of the argument: On our preferred interpretation, one never reaches this impasse: The function of the system is to maintain an inequality in the society and fields of human engagement. It supports the privilege theories that affirms position of certain individuals higher in the hierarchy of ranks at the expense of others. For better individuality cooperation is considered to be a better remedy for personal growth. Nobody will waste his life in accumulating things, and the symbols for things. To live is the rarest thing in the world. Most people exist, that is all. Oscar Wilde , The Soul of Man under Socialism , Individualists are chiefly concerned with protecting individual autonomy against obligations imposed by social institutions such as the state or religious morality. Susan Brown "Liberalism and anarchism are two political philosophies that are fundamentally concerned with individual freedom yet differ from one another in very distinct ways. Because of this, a civil libertarian outlook is compatible with many other political philosophies, and civil libertarianism is found on both the right and left in modern politics. They demanded greater personal autonomy and self-determination and less outside control.

Chapter 2 : Republic vs. Democracy

Individual rights refer to the liberties of each individual to pursue life and goals without interference from other individuals or the government. Examples of individual rights include the right to life, liberty and the pursuit of happiness as stated in the United States Declaration of Independence.

What is the function of the Supreme Court? How does the Court decide which cases to review, and how does it decide the cases that it does review? The Court met for the first time on February 2, The number of justices has varied, beginning with six, then increasing to seven in , and finally to nine in Each justice is nominated by the President, confirmed by the Senate, and serves for life. The Senate confirmation process begins with hearings before the Judiciary Committee and ends with a vote of the full Senate. A simple majority is required for confirmation. Justices who commit "high crimes or misdemeanors" are subject to impeachment and removal from office. The Term of the Court begins, by law, on the first Monday in October. In a typical year, decisions are announced in all the argued cases by the end of June. An average of about 7, to 8, petitions are filed with the Court over the course of a single Term; of those only about or so are set for full briefing and oral argument. In addition to the petitions, another 1, or so applications e. These applications can be acted upon by a single justice. The Court and Constitutional Interpretation "The republic endures and this is the symbol of its faith. The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution. Few other courts in the world have the same authority of constitutional interpretation and none have exercised it for as long or with as much influence. A century and a half ago, the French political observer Alexis de Tocqueville noted the unique position of the Supreme Court in the history of nations and of jurisprudence. A more imposing judicial power was never constituted by any people. The United States has demonstrated an unprecedented determination to preserve and protect its written Constitution, thereby providing the American "experiment in democracy" with the oldest written Constitution still in force. The Constitution of the United States is a carefully balanced document. To assure these ends, the Framers of the Constitution created three independent and coequal branches of government. That this Constitution has provided continuous democratic government through the periodic stresses of more than two centuries illustrates the genius of the American system of government. This power of "judicial review" has given the Court a crucial responsibility in assuring individual rights, as well as in maintaining a "living Constitution" whose broad provisions are continually applied to complicated new situations. While the function of judicial review is not explicitly provided in the Constitution, it had been anticipated before the adoption of that document. Prior to , state courts had already overturned legislative acts which conflicted with state constitutions. Moreover, many of the Founding Fathers expected the Supreme Court to assume this role in regard to the Constitution; Alexander Hamilton and James Madison, for example, had underlined the importance of judicial review in the Federalist Papers, which urged adoption of the Constitution. Hamilton had written that through the practice of judicial review the Court ensured that the will of the whole people, as expressed in their Constitution, would be supreme over the will of a legislature, whose statutes might express only the temporary will of part of the people. And Madison had written that constitutional interpretation must be left to the reasoned judgment of independent judges, rather than to the tumult and conflict of the political process. If every constitutional question were to be decided by public political bargaining, Madison argued, the Constitution would be reduced to a battleground of competing factions, political passion and partisan spirit. That oath could not be fulfilled any other way. In retrospect, it is evident that constitutional interpretation and application were made necessary by the very nature of the Constitution. The Founding Fathers had wisely worded that document in rather general terms leaving it open to future elaboration to meet changing conditions. Maryland, a constitution that attempted to detail every aspect of its own application "would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the

minor ingredients which compose those objects be deduced from the nature of the objects themselves. The Court does not give advisory opinions; rather, its function is limited only to deciding specific cases. The Justices must exercise considerable discretion in deciding which cases to hear, since more than 7, civil and criminal cases are filed in the Supreme Court each year from the various state and federal courts. The Supreme Court also has "original jurisdiction" in a very small number of cases arising out of disputes between States or between a State and the Federal Government. When the Supreme Court rules on a constitutional issue, that judgment is virtually final; its decisions can be altered only by the rarely used procedure of constitutional amendment or by a new ruling of the Court. However, when the Court interprets a statute, new legislative action can be taken. Chief Justice Marshall expressed the challenge which the Supreme Court faces in maintaining free government by noting: Supreme Court web site www. The addition of Kagan, 50, to the Court is not expected to change the overall balance of the Court. Justice Kennedy will remain the key swing vote on many issues. The case is the landmark home privacy decision, Stanley v Georgia. Examine the documents and records below sufficiently to understand the purpose of each document and its potential significance to the outcome of the case:

Chapter 3 : The Colonial Experience [www.nxgvision.com]

The individual right that is widely regarded as the most basic of individual rights is freedom of expression. Justice Holmes's "clear and present danger" test holds that government can.

All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms: XXII - the right of property is guaranteed; XXIII - property shall fulfill its social function; XXIV - the law shall establish the procedure for expropriation for public necessity or use, or for social interest, with fair and previous pecuniary compensation, except for the cases provided in this Constitution; XXV - in case of imminent public danger, the competent authority may make use of private property, provided that, in case of damage, subsequent compensation is ensured to the owner; XXVI - the small rural property, as defined by law, provided that it is exploited by the family, shall not be subject to attachment for the payment of debts incurred by reason of its productive activities, and the law shall establish the means to finance its development; XXVII - the exclusive right of use, publication or reproduction of works rests upon their authors and is transmissible to their heirs for the time the law shall establish; XXVIII - under the terms of the law, the following are ensured: XXXIV - the following are ensured to everyone without any payment of fees: XXXIX - the institution of the jury is recognized, according to the organization which the law shall establish, and the following are ensured: The provisions that define the fundamentals rights and guarantees have immediate appliation. The rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it, or from the international treaties in which the Federative Republic of Brazil is a party. The international treaties and conventions on Human Rights which are approved, in each House of National Congress, in two rounds, by three fifths of votes of the respective members, will be equivalent to Constitutional Ammendments. Brazil shall be submitted to the jurisdiction of International Penal Tribunal to which creation it had manifested agreement. Paragraphs 3 and 4 added by CA nr. Education, health, work, habitation, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, are social rights, as set forth by this Constitution. The word "habitation" was included by CA nr. The following are rights of urban and rural workers, among others that aim to improve their social conditions: XXX - prohibition of any difference in wages, in the performance of duties and in hiring criteria by reason of sex, age, colour or marital status; XXXI - prohibition of any discrimination with respect to wages and hiring criteria of handicapped workers; XXXII - prohibition of any distinction between manual, technical and intellectual work or among the respective professionals; XXXIII - prohibition of night, dangerous or unhealthy work for minors under eighteen years of age, and of any work for minors under fourteen years of age, except as an apprentice; XXXIV - equal rights for workers with a permanent employment bond and for sporadic workers. Professional or union association is free, with due regard to the following: Sole paragraph - The provisions of this article apply to the organization of rural unions and those of fishing communities, with due regard for the conditions established by law. The right to strike is guaranteed, it being the competence of workers to decide on the advisability of exercising it and on the interests to defended thereby. The abuses committed shall subject those responsible to penalties of the law. The participation of workers and employers is ensured in collegiate bodies of government agencies in which their professional or so security interests are subject of discussion and resolution. It is ensured, in companies with more than employees, the election of a representative of the employees for the exclusive purpose of furthering direct negotiations with the employers. The following are Brazilians: I - by birth: The rights inherent to Brazilians shall be attributed to Portuguese citizens with permanent residence in Brazil, if there is reciprocity in favour of Brazilians, except in the cases stated in this Constitution. CA of Revision nr. The law may not establish any distinction between born and naturalized Brazilians, except in the cases stated in this Constitution. The following offices are exclusive for born Brazilians: VII - Minister of Defense. Loss of nationality shall be declared for a Brazilian who: I - has his naturalization cancelled by court decision on account of an activity harmful to the national interests; II - acquires another nationality, save in the cases:

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Portuguese is the official language of the Federative Republic of Brazil. The national flag, anthem, coat of arms and seal are the symbols of the Federative Republic of Brazil. The states, the Federal District and the municipalities may have symbols of their own. The sovereignty of the people shall be exercised by universal suffrage and by the direct and secret voting, with equal value for all, and, according to the law, by means of:

Chapter 4 : Federal v. Consolidated Government: Brutus, no. 1

The first 17 clauses of Article 1 Section 8 specify most of the enumerated powers of the national government Elastic Clause, or Necessary and Proper Clause the Clause in Article I, Section 8, that grants Congress the power to do whatever necessary to execute its specifically delegated powers.

Updated by Cassandra Capobianco , by Jeffrey S. Gutman Besides authorizing official capacity suits against state and local officials for structural injunctive relief, 42 U. Although, as discussed above, the Eleventh Amendment limits official capacity claims against state officials to prospective injunctive relief, it does not affect damage claims against those officials in their individual capacity. Absolute Immunity By its terms, Section imposes liability without defense on state and local officials who, acting under color of law in their individual capacity, deprive plaintiffs of rights created by the Constitution and federal law. Nevertheless, the Supreme Court, drawing on common law, created absolute immunity from liability for some government officials and qualified immunity for others. Absolute and qualified immunity were developed to protect officials from lawsuits for actions relating to their official duties. The Court explained the underlying rationale for immunity: Public officials, whether governors, mayors or police, legislators or judges, who fail to make decisions when they are needed or who do not act to implement decisions when they are made do not fully and faithfully perform the duties of their offices. Implicit in the idea that officials have some immunityâ€" absolute or qualified â€"for their acts, is a recognition that they may err. The concept of immunity assumes this and goes on to assume that it is better to risk some error and possible injury from such error than not to decide or act at all. Absolute immunity focuses on the governmental function being performed and the nature of the responsibilities of the official, not on the specific action taken. The girl underwent the procedure six days later under a misinformed belief that she was having her appendix removed. She did not find out about the sterilization, or the court order, until after she married and was unable to become pregnant. Though issued in excess of his jurisdiction, it was not issued in the clear absence of jurisdiction. If a court, individual judge, or prosecutor performs executive or legislative functions, immunity will be determined by the immunity applicable to the legislative or executive function performed. Because a judge who hires and fires is indistinguishable from an administrative or executive branch official who makes personnel decisions, those decisions are administrative rather than a judicial acts and, therefore, not protected by absolute immunity. The Court remanded for a determination of whether the judge was protected by qualified immunity. Similarly, a judge who harassed and arguably constructively discharged his secretary because she became engaged to a courthouse employee did not act in a judicial capacity and, therefore, was not entitled to absolute immunity. The act of holding a party in contempt in a proceeding in which a judge has subject-matter jurisdiction is a judicial act, and the failure to issue the required stay was a judicial error by a judge performing a judicial function rather than an act taken in the complete absence of jurisdiction. Similarly, a night court judge who ordered his bailiff to detain, handcuff, and bring into a court a coffee vendor who sold putrid coffee was not entitled to judicial immunity. In one case, for example, a judge whose subject matter jurisdiction to issue arrest warrants was limited to crimes committed within his judicial district lost judicial immunity when he signed an arrest warrant based on a complaint of criminal conduct which he knew occurred outside his territorial jurisdiction. Second, does a Board member, like a judge, decide cases sufficiently controversial that, in the absence of absolute immunity, he would be subject to numerous damages actions? Prosecutorial Immunity Prosecutors enjoy absolute immunity from damage liability for the initiation and prosecution of a criminal case. Struggling to define the boundaries of prosecutorial immunity, the Court held that a prosecutor who advised police officers on Fourth Amendment considerations in an ongoing criminal investigation performed an investigatory rather than a prosecutorial function and was, therefore, not entitled to absolute immunity. That same prosecutor, however, was entitled to absolute immunity for eliciting misleading testimony from those officers at a hearing on an application for a search warrant. The former performs a prosecutorial function by presenting evidence, while the latter performs a police investigatory function by gathering evidence. Pachtman suggested that the inquiry begins with determining whether the prosecutor is performing a

quasi-judicial function. A prosecutor obviously performs that function by trying a criminal case; hence, absolute immunity extended to the presentation of perjured testimony and the withholding of exculpatory evidence. Goldstein explained the boundary between prosecutorial and administrative functions and, in a sense, blurred them. In Goldstein, the plaintiff alleged that the district attorney and his chief assistant failed to adequately train line prosecutors on their duties to provide impeachment related information about prosecution witnesses to defense attorneys. Witness Immunity With the exception of complaining witnesses who sign affidavits seeking the issuance of search or arrest warrants, witnesses in judicial proceedings are absolutely immune from suit arising from their testimony. Just as judicial immunity extends to prosecutors presenting a criminal case, so does it extend to witnesses testifying in judicial proceedings. Complaining witnesses who swear affidavits in support of arrest and search warrants are said not to be participants in judicial proceedings and, therefore, enjoy only qualified immunity. Legislative Immunity Members of Congress acting as legislators are absolutely immune from suits for either prospective relief or damages under the speech and debate clause of the U. The immunity attaches to any legislator acting in the sphere of any legitimate legislative activity, including the conduct or participation of investigations by standing or special committees. Introducing and voting for a general budget that abolishes a specific position within local government, for example, is a legislative act sheltered by absolute immunity whatever the motives of the legislators may be. Scott-Harris left open the question of whether introducing and voting for an ordinance was always a legislative act. The still evolving scope of legislative immunity may generate substantial litigation as local governments learn to be more sophisticated in using their powers to punish unpopular speech and unpopular groups. But, for the most part, legislative immunity should not pose a major practice problem. Litigation seeking to enjoin the enforcement of an unconstitutional statute should proceed against the officials charged with enforcement rather than the legislators who enacted it. Executive Officials The U. The defense rests upon two mutually dependent rationales: Early cases required a public employee to establish both that he did not violate clearly established law and that he acted without malicious intent. This involves a historical inquiry into whether the law was clearly established when the defendant acted. Katz held that lower courts must decide qualified immunity defenses using that two step analysis in that sequence. Callahan the Court subsequently relaxed the analysis, holding that the Saucier procedure was not mandatory and that courts should have the flexibility to decide the question in either order. Clearly Established Law Whether qualified immunity applies critically depends on the level of generality at which a court assesses whether the law is clearly established. In a series of cases, the Supreme Court sketched out the approach to be taken. The Court rejected that argument, holding that the two inquiries into reasonableness incorporated a different focus. The Fourth Amendment inquiry asks whether the officer reasonably, even if mistakenly, appraised the facts in assessing whether probable cause existed. That warning, however, does not necessarily require there to be a prior case on point presenting materially similar facts. Ramirez that a search warrant that failed to describe either the person or things to be seized was facially invalid under the Fourth Amendment, foreclosing the officer who prepared and executed the warrant from asserting qualified immunity even though the warrant application described the things to be seized and the search was confined to the scope of the warrant application. Acceptance by other courts of the reasonableness of, for example, a search and seizure can be sufficient to show that unlawfulness of a search and seizure was not clearly established. The Reasonable Official and Scope of Discretion The question of whether a reasonable official should have believed that the conduct in question violated clearly established law is largely a function of whether the law in question was clearly established. Rhodes and was last mentioned in Nixon v. The courts of appeal have not relied on it since Advocates should refrain from suing officials for damages in the absence of evidentiary support that will allow a claim to overcome qualified immunity. Qualified Immunity, Intentional Discrimination, and Retaliation Conventional claims of unlawful discrimination and retaliation rest upon conduct whose legality depends upon the motive for rather than the character of the conduct. The Constitution does not prohibit firing public employees, but it does prohibit firing them because of their race or in retaliation for protected speech. To avoid summary judgment on the merits of the underlying constitutional claim, the plaintiff must produce sufficient evidence, usually circumstantial, from which a reasonable jury can infer that the defendant intentionally discriminated or retaliated; without that

evidence, the plaintiff cannot establish unconstitutional conduct. But if the plaintiff has sufficient evidence of unconstitutional motive to avoid summary judgment, qualified immunity generally will not benefit a defendant because the constitutional prohibition against intentional discrimination or retaliation has long been clearly established law. To preserve a place for qualified immunity in state of mind litigation, the Court suggested that trial courts address the defense within the existing framework of the rules of civil procedure by requiring, when appropriate, that plaintiffs plead further in response to the defense and by imposing careful controls on discovery. Plausibility pleading makes state of mind cases substantially more difficult to proceed past the motion to dismiss stage. Qualified Immunity Practice and Procedure Qualified immunity protects public officials from the burden of litigation as well as from judgments. Should the court deny the motion to dismiss or for summary judgment, the defendant may be entitled to an immediate interlocutory appeal and, should the defendant take one, there is a stay of further proceedings in the district court pending adjudication of the appeal. If resolution of the defense turns on pure issues of law, an interlocutory appeal is permitted under the collateral order doctrine. Accordingly, you must discuss with your clients the advantages and disadvantages of suing public officials for damages so that they can make an informed decision on whether the claim is worth pursuing in the face of almost certain delay. Should the court again deny summary judgment following discovery, the defendant may take a second interlocutory appeal. Melo , U. Rhodes , U. Scherer , U.

Chapter 5 : Individual Rights | The Ayn Rand Institute

Individual Rights and the Obligations of Government. 1st Post Due by Day 3. Prepare: Prior to beginning work on this discussion, read chapters 8, 9, and 10 in American Government and watch the.

I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all. A republic and a democracy are identical in every aspect except one. In a republic the sovereignty is in each individual person. In a democracy the sovereignty is in the group. That form of government in which the powers of sovereignty are vested in the people and are exercised by the people, either directly, or through representatives chosen by the people, to whome those powers are specially delegated. The word "people" may be either plural or singular. In a republic the group only has advisory powers; the sovereign individual is free to reject the majority group-think. That form of government in which the sovereign power resides in and is exercised by the whole body of free citizens directly or indirectly through a system of representation, as distinguished from a monarchy, aristocracy, or oligarchy. In other words, the minority has no rights. The minority only has those privileges granted by the dictatorship of the majority. It has great legal significance. The Constitution guarantees to every state a Republican form of government Art. No state may join the United States unless it is a Republic. Our Republic is one dedicated to "liberty and justice for all. The people have natural rights instead of civil rights. The people are protected by the Bill of Rights from the majority. One vote in a jury can stop all of the majority from depriving any one of the people of his rights; this would not be so if the United States were a democracy. In a democracy there is no such thing as a significant minority: Only five of the U. Simply stated, a democracy is a dictatorship of the majority. Socrates was executed by a democracy: In a colloquial sense, the United States or its representatives, considered as the prosecutor in a criminal action; as in the phrase, "the government objects to the witness. One in which the powers of sovereignty are vested in the people and are exercised by the people, either directly, or through representatives chosen by the people, to whome those powers are specially delegated. In re Duncan, U. The people argue this environmental issue back and forth. They argue the pros and cons of the issue. This great debate is held at town hall meetings. Strong opinions are on both sides of the matter. One side preaches, "It is for the common good! The people go to the ballot box to settle the problem. The minority is ignored. The majority celebrates while the minority jeers in disappointment. Since the majority won, the bill goes in effect. For the reason that the majority has mandatory powers in a democracy. Those who wish to go against the collective whole body politic will be punished accordingly. The minority has neither voice nor rights to refuse to accept the dictatorial majority. Everything is mandatory in a democracy. This brings dictatorship and lividity to the realm. Republican Form of Government: The minority may have lost, but not all is gone. For the reason that the majority has advisory powers in a republic. Bearing in mind that each individual is equally sovereign in a republic, he is free to reject the majority. He may choose to follow the majority and subject himself to the rule, or he may choose not to follow the majority and not subject himself to the rule. The minority has a voice and rights to refuse to accept the majority. Everything is advisory in a republic. This brings liberty and peace to the realm.

Chapter 6 : Individualism - Wikipedia

Individual Rights v. The Common Good Creating the Constitution: Striking a Balance The founders creating the Constitution in revolutionary America focused on deciding which forms of government would best.

Since American Indians are now taxed, they are counted for purposes of apportionment. The 17th Amendment provided for the direct popular election of Senators. The filling of vacancies was altered by the 17th amendment. The 20th Amendment changed the starting date for a session of Congress to noon on the 3d day of January This obsolete provision was designed to protect the slave trade from congressional restriction for a period of time. Section 2 The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen. Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies. The House of Representatives shall chuse their Speaker and other Officers;and shall have the sole Power of Impeachment. Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies. No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen. The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States. The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. And no Person shall be convicted without the Concurrence of two thirds of the Members present. Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: Section 4 The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators. The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day. Section 5 Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members,and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide. Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member. Each

House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal. Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting. Section 6 The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place. No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office. Section 7 All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days Sundays excepted after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law. Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary except on a question of Adjournment shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill. No Bill of Attainder or ex post facto Law shall be passed. No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken. No Tax or Duty shall be laid on Articles exported from any State. No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time. No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State. No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay. Although the form of each government differed, most tended to elevate the legislature above the executive and judiciary, and made the legislature as responsive to majoritarian sentiments as possible. State legislatures began enacting laws to relieve debtors who were numerous of their debts, which undermined the rights of creditors who were few and the credit market. States also erected an assortment of trade barriers to protect their own businesses from competing firms in neighboring states. And, because state legislatures controlled their own commerce, the federal Congress was unable to enter into credible trade agreements with foreign powers to open markets for American goods, in part, by threatening to restrict foreign access to the American market. The result of all this was a nationwide economic downturn that, rightly or not, was blamed on ruinous policies enacted by democratically-elected legislatures. In , political dissatisfaction with the economic situation led to a

convention convened in Philadelphia to remedy this state of affairs. The new Constitution it proposed, addressed debtor relief laws with the Contracts Clause of Article I, Section 10, which barred states from "impairing the obligation of contracts. The international commerce power also gave Congress the power to abolish the slave trade with other nations, which it did effective on January 1, , the very earliest date allowed by the Constitution. But, in the words of Chief Justice John Marshall, the "enumeration" of three distinct commerce powers in the Commerce Clause "presupposes something not enumerated, and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a State. Ogden Marshall, C. So, for example, even when combined with the Necessary and Proper Clause giving Congress power to make all laws which shall be necessary and proper for carrying into execution its enumerated powers, the Commerce Clause did not give Congress power to touch slavery that was allowed by state governments within their borders. The text of the Commerce Clause raises at least three questions of interpretation: What is the meaning of "commerce"? What is the meaning of "among the several states"? And what is the meaning of "to regulate"? Some have claimed that each of these terms of the Commerce Power had, at the time of the founding, an expansive meaning in common discourse, while others claim the meaning was more limited. In addition to other pervasive evidence of the public meaning of these terms, the slavery issue helps clarify the original public meaning of these terms at the time of their enactment. Among the several states meant between one state and others, not within a state, where slavery existed as an economic activity. From the founding until today, the meaning of "commerce" has not been much changed. Perhaps its only expansion by the Supreme Court came in when the Court held that commerce included "a business such as insurance," which for a hundred years had been held to be solely a subject of internal state regulation. Darby , the "power of Congress over interstate commerce is not confined to the regulation of commerce among the states. But in McCulloch, Chief Justice Marshall insisted that "should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government; it would become the painful duty of this tribunal. Thus, the Court expanded Congress power over interstate commerce in a way that gave it power over the national economy. In the s, the Rehnquist Court treated these New Deal cases as the high water mark of congressional power. In the cases of U. Lopez and U. Morrison , the Court confined this regulatory authority to intrastate economic activity. In addition, in a concurring opinion in Gonzales v. Raich , Justice Scalia maintained that, under Lopez, "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce. Sebelius , in , a majority of the justices found that a mandate to compel a person to engage in the economic activity of buying health insurance was beyond the powers of Congress under both the Commerce and Necessary and Proper Clauses. The dispute over the breadth of the meaning of "commerce" turns, in large part, on the purposes one attributes to the clause, and to the Constitution as a whole, and what one thinks is the relevance of such purposes to the meaning of the text. At Philadelphia in , the Convention resolved that Congress could "legislate in all cases. Convention 21 Max Farrand ed. This was then translated by the Committee of Detail into the present enumeration of powers in Article I, Section 8, which was accepted as a functional equivalent by the Convention without much discussion. Proponents of an expansive reading claim that the power to regulate commerce should extend to any problem the states cannot separately solve. Those who support a narrower reading observe that the Constitution aims to constrain, as well as to empower, Congress, and the broadest reading of the Commerce power extends well beyond anything the framers imagined. As the dissenters in the health care case observed, "Article I contains no whatever-it-takes-to-solve-a-national-problem power. For contrasting views of evidence on the original public meaning of the terms in the Commerce Clause, compare Randy E. Balkin, Living Originalism ; Randy E. Barnett As Professor Koppelman and my jointly-authored essay shows, abundant evidenceâ€”including what we know about slavery at the time of the Foundingâ€”tells us that the original meaning of the Commerce Clause gave Congress the power to make regular, and even to prohibit, the trade, transportation or movement of persons and goods from one state to a foreign nation, to another state, or to an Indian tribe. It did not originally include the power to regulate the economic activities, like manufacturing or agriculture, that produced the goods to be traded or transported. We should follow the original meaning of this provision for

the same reason we limit California to the same number of Senators as Delaware, notwithstanding the vast disparity between their populations, or limit the president to a person who is at least thirty-five years old, though some who are younger than thirty-five might make excellent presidents. A written constitution is the law that governs those who govern us. And those who govern usâ€" whether the Congress, the president, or the courtsâ€"can no more properly change the law that governs them without going through the amendment process of Article V, than can the people can change the speed limits imposed on them without going through the legislative process. But such an oath would be meaningless if it was merely promising to obey whatever meaning a government official later wants the Constitution to mean. I agree with Professor Koppelman that the Founders attempted to distinguish the problems that were best handled at the national level from those best handled by the states. But they did so by drafting a specific list of such powers, rather than leave it to the national authority to decide the scope of its own power. Where later developments justify adding to these national powers, such expansion is properly handled by an Article V constitutional amendment, as the Constitution was once amended to give Congress the power to prohibit the intrastate economic activity of producing and selling alcohol. See the Eighteenth Amendment. Enforcing the original meaning of the Commerce Clause does not mean that other economic activities are free from any government regulation. It merely means that the power to regulate all intrastate economic activities resides with each of the fifty states. Where national uniformity and coordination between states are desirable, these goals can be achieved by the Interstate Compacts Clause of Article I, Section 8, by which states may enter into agreements or compacts with another state or states, provided they have the consent of Congress. Many such compacts exist. Read the full discussion here. I identify some of the key advantages of decentralizing most law-making at the state level in my statement on Federalism. Here is a summary of my analysis there: Federalism Makes Regulatory Diversity Possible.

Chapter 7 : Civil liberties in the United Kingdom - Wikipedia

The individual right sinks in the necessity to provide for the public good" (Parmet,). Even more remarkably, a plenary grant of authority was still found to be constitutional in the s. Even more remarkably, a plenary grant of authority was still found to be constitutional in the s.

The Colonial Experience John Winthrop was the governor of the Massachusetts Bay Colony, one of the eight colonies governed by royal charter in the colonial period. They created and nurtured them. Like children, the American colonies grew and flourished under British supervision. Like many adolescents, the colonies rebelled against their parent country by declaring independence. But the American democratic experiment did not begin in The colonies had been practicing limited forms of self-government since the early s. The great expanse of the Atlantic Ocean created a safe distance for American colonists to develop skills to govern themselves. Despite its efforts to control American trade, England could not possibly oversee the entire American coastline. Colonial merchants soon learned to operate outside British law. Finally, those who escaped religious persecution in England demanded the freedom to worship according to their faiths. Colonial Governments Each of the thirteen colonies had a charter, or written agreement between the colony and the king of England or Parliament. Charters of royal colonies provided for direct rule by the king. A colonial legislature was elected by property holding males. But governors were appointed by the king and had almost complete authority â€" in theory. The legislatures controlled the salary of the governor and often used this influence to keep the governors in line with colonial wishes. The first colonial legislature was the Virginia House of Burgesses, established in The colonies along the eastern coast of North America were formed under different types of charter, but most developed representative democratic governments to rule their territories. When the first Pilgrims voyaged to the New World, a bizarre twist of fate created a spirit of self-government. These Pilgrims of the Mayflower were bound for Virginia in , but they got lost and instead landed at Plymouth in present-day Massachusetts. Since Plymouth did not lie within the boundaries of the Virginia colony, the Pilgrims had no official charter to govern them. So they drafted the Mayflower Compact, which in essence declared that they would rule themselves. Although Massachusetts eventually became a royal colony, the Pilgrims at Plymouth set a powerful precedent of making their own rules that later reflected itself in the town meetings that were held across colonial New England. England tried to regulate trade, and forbid colonies from trading with other European countries. England also maintained the right to tax the colonies. Both trade and taxation were difficult for England to control, and so an informal agreement emerged. England regulated trade but allowed colonists the right to levy their own taxes. A proprietary charter allowed the governor of the colony to rule with great power over his lands. This delicate agreement was put to test by the French and Indian War. The war was expensive, and from the British point of view, colonists should help pay for it, especially considering that England believed it was protecting the colonists from French and Indian threats. The new taxes levied by the Crown nevertheless horrified the colonists. British naval measures to arrest smugglers further incited American shippers. These actions served as stepping stones to the Revolution. Religious Freedom Religious freedom served as a major motivation for Europeans to venture to the American colonies. Puritans and Pilgrims in Massachusetts, Quakers in Pennsylvania, and Catholics in Maryland represented the growing religious diversity in the colonies. Rhode Island was founded as a colony of religious freedom in reaction to zealous Puritans. As a result, many different faiths coexisted in the colonies. This variety required an insistence on freedom of religion since the earliest days of British settlement. So the colonial experience was one of absorbing British models of government, the economy, and religion. Over the course of about years, American colonists practiced these rudimentary forms of self-government that eventually led to their decision to revolt against British rule. The democratic experiment of American self-rule was therefore not a sudden change brought about by the Declaration of Independence. By , Americans had plenty of practice. The Royal Proclamation of This proclamation, issued by the King of England in , is a good example of a royal charter. This website from a Canadian lawyer also includes a brief annotation that gives the historical background to the text, and a map showing the regions in question. William Penn â€" Visionary

DOWNLOAD PDF V. 1. THE INDIVIDUAL AND THE GOVERNMENT

Proprietor William Penn ruled all of Pennsylvania through the powers of his proprietary charter. What he set up was a model state of the kind of religious tolerance that the U. The Stamp Act Imagine being taxed to play cards or read a newspaper. After the French and Indian War, the King of England imposed new taxes such as those on the thirteen colonies. These taxes led to the cry of "taxation without representation" and ultimately the American Revolution. One of the earliest examples of a royal charter, this document, online at Yale University, gave Sir Walter Raleigh power over any new land he came across. In colonial Virginia, colonists had to pay tax on just about everything, including people. Slaves, Native American servants, and widows were named as just a few of the things that a household might be taxed on. Check out this all-text table of taxes from the Library of Virginia.

Chapter 8 : Anti-Federalists and Brutus No. 1 (video) | Khan Academy

The individual income tax is what makes many of the benefits and programs provided by the federal government possible, but having the rate set too high can have serious consequences on the.

The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto. The office of every such Justice and Judge shall become vacant on the expiration of the term during which the incumbent reaches the age of seventy-five 75 years or such earlier age, not less than seventy 70 years, as the Legislature may prescribe, except that if a Justice or Judge elected to serve or fill the remainder of a six-year term reaches the age of seventy-five 75 years during the first four years of the term, the office of that Justice or Judge shall become vacant on December 31 of the fourth year of the term to which the Justice or Judge was elected. Commissioners of classes i , ii , vii , and viii above shall be chosen by the Supreme Court with advice and consent of the Senate, those of class iii by the Board of Directors of the State Bar under regulations to be prescribed by the Supreme Court with advice and consent of the Senate, those of class iv by appointment of the Governor with advice and consent of the Senate, and the commissioners of classes v and vi by appointment of the Supreme Court as provided by law, with the advice and consent of the Senate. Interim vacancies shall be filled in the same manner as vacancies due to expiration of a full term, but only for the unexpired portion of the term in question. Commissioners may succeed themselves in office only if having served less than three 3 consecutive years. The Legislature shall provide for the payment of the necessary expense for the operation of the Commission. It shall annually select one of its members as Chairman. A quorum shall consist of seven 7 members. Proceedings shall be by majority vote of those present, except that recommendations for retirement, censure, suspension, or removal of any person holding an office named in Paragraph A of Subsection 6 of this Section shall be by affirmative vote of at least seven 7 members. Any Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in Section 1 , Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office, as provided by this section. Any person holding an office specified in this subsection may be suspended from office with or without pay by the Commission immediately on being indicted by a State or Federal grand jury for a felony offense or charged with a misdemeanor involving official misconduct. On the filing of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit on the judiciary or on the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission, may recommend to the Supreme Court the suspension of such person from office. The Supreme Court, after considering the record of such appearance and the recommendation of the Commission, may suspend the person from office with or without pay, pending final disposition of the charge. Any person holding an office named in Paragraph A of this subsection who is eligible for retirement benefits under the laws of this state providing for judicial retirement may be involuntarily retired, and any person holding an office named in that paragraph who is not eligible for retirement benefits under such laws may be removed from office, for disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature. The law relating to the removal, discipline, suspension, or censure of a Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in this Constitution applies to a master or magistrate appointed as provided by law to serve a trial court of this State and to a retired or former Judge who continues as a judicial officer subject to an assignment to sit on a court of

this State. Under the law relating to the removal of an active Justice or Judge, the Commission and the review tribunal may prohibit a retired or former Judge from holding judicial office in the future or from sitting on a court of this State by assignment. Its orders for the attendance or testimony of witnesses or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings in the District Court or by a Master. The Master shall have all the power of a District Judge in the enforcement of orders pertaining to witnesses, evidence, and procedure. If, after formal hearing, or after considering the record and report of a Master, the Commission finds good cause therefor, it shall issue an order of public admonition, warning, reprimand, censure, or requirement that the person holding an office or position specified in Subsection 6 of this Section obtain additional training or education, or it shall recommend to a review tribunal the removal or retirement, as the case may be, of the person and shall thereupon file with the tribunal the entire record before the Commission. Each Court of Appeals shall designate one of its members for inclusion in the list from which the selection is made. Service on the tribunal shall be considered part of the official duties of a judge, and no additional compensation may be paid for such service. The review tribunal shall review the record of the proceedings on the law and facts and in its discretion may, for good cause shown, permit the introduction of additional evidence. Within 90 days after the date on which the record is filed with the review tribunal, it shall order public censure, retirement or removal, as it finds just and proper, or wholly reject the recommendation. A Justice, Judge, Master, or Magistrate may appeal a decision of the review tribunal to the Supreme Court under the substantial evidence rule. Upon an order for involuntary retirement for disability or an order for removal, the office in question shall become vacant. The review tribunal, in an order for involuntary retirement for disability or an order for removal, may prohibit such person from holding judicial office in the future. The rights of an incumbent so retired to retirement benefits shall be the same as if his retirement had been voluntary. However, the Commission may issue a public statement through its executive director or its Chairman at any time during any of its proceedings under this Section when sources other than the Commission cause notoriety concerning a Judge or the Commission itself and the Commission determines that the best interests of a Judge or of the public will be served by issuing the statement. Such rule shall provide the right of discovery of evidence to a Justice, Judge, Master, or Magistrate after formal proceedings are instituted and shall afford to any person holding an office or position specified in Subsection 6 of this Section, against whom a proceeding is instituted to cause his retirement or removal, due process of law for the procedure before the Commission, Masters, review tribunal, and the Supreme Court in the same manner that any person whose property rights are in jeopardy in an adjudicatory proceeding is entitled to due process of law, regardless of whether or not the interest of the person holding an office or position specified in Subsection 6 of this Section in remaining in active status is considered to be a right or a privilege. Due process shall include the right to notice, counsel, hearing, confrontation of his accusers, and all such other incidents of due process as are ordinarily available in proceedings whether or not misfeasance is charged, upon proof of which a penalty may be imposed. See Appendix, Note 3. Its jurisdiction shall be co-extensive with the limits of the State and its determinations shall be final except in criminal law matters. Its appellate jurisdiction shall be final and shall extend to all cases except in criminal law matters and as otherwise provided in this Constitution or by law. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State. The Legislature shall have the power to provide by law, for an appeal direct to the Supreme Court of this State from an order of any trial court granting or denying an interlocutory or permanent injunction on the grounds of the constitutionality or unconstitutionality of any statute of this State, or on the validity or invalidity of any administrative order issued by any state agency under any statute of this State. The Judges shall have the same qualifications and receive the same salaries as the Associate Justices of the Supreme Court, and the Presiding Judge shall have the same qualifications and receive the same salary as the Chief Justice of the Supreme Court. The Presiding Judge and the Judges shall be elected by the qualified

voters of the state at a general election and shall hold their offices for a term of six years. In a panel of three Judges, two Judges shall constitute a quorum and the concurrence of two Judges shall be necessary for a decision. The Presiding Judge, under rules established by the court, shall convene the court en banc for the transaction of all other business and may convene the court en banc for the purpose of hearing cases. The court must sit en banc during proceedings involving capital punishment and other cases as required by law. When convened en banc, five Judges shall constitute a quorum and the concurrence of five Judges shall be necessary for a decision. The appeal of all other criminal cases shall be to the Courts of Appeal as prescribed by law. In addition, the Court of Criminal Appeals may, on its own motion, review a decision of a Court of Appeals in a criminal case as provided by law. Discretionary review by the Court of Criminal Appeals is not a matter of right, but of sound judicial discretion. The Court and the Judges thereof shall have the power to issue such other writs as may be necessary to protect its jurisdiction or enforce its judgments. The court shall have the power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction. The Supreme Court, Court of Criminal Appeals, and each Court of Appeals shall each appoint a clerk of the court, who shall give bond in the manner required by law, may hold office for four years subject to removal by the appointing court for good cause entered of record on the minutes of the court, and shall receive such compensation as the legislature may provide. The Justices shall have the qualifications prescribed for Justices of the Supreme Court. The Court of Appeals may sit in sections as authorized by law. The concurrence of a majority of the judges sitting in a section is necessary to decide a case. Said Court of Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error. Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law. Said Justices shall be elected by the qualified voters of their respective districts at a general election, for a term of six years and shall receive for their services the sum provided by law. The State shall be divided into judicial districts, with each district having one or more Judges as may be provided by law or by this Constitution. Each district judge shall be elected by the qualified voters at a General Election and shall be a citizen of the United States and of this State, who is licensed to practice law in this State and has been a practicing lawyer or a Judge of a Court in this State, or both combined, for four 4 years next preceding his election, who has resided in the district in which he was elected for two 2 years next preceding his election, and who shall reside in his district during his term of office and hold his office for the period of four 4 years, and who shall receive for his services an annual salary to be fixed by the Legislature. The Court shall conduct its proceedings at the county seat of the county in which the case is pending, except as otherwise provided by law. He shall hold the regular terms of his Court at the County Seat of each County in his district in such manner as may be prescribed by law. The Legislature shall have power by General or Special Laws to make such provisions concerning the terms or sessions of each Court as it may deem necessary. The Legislature shall also provide for the holding of District Court when the Judge thereof is absent, or is from any cause disabled or disqualified from presiding. In the event of a vacancy in the appointed membership, the vacancy is filled for the unexpired term in the same manner as the original appointment. The adoption of a reapportionment order requires a majority vote of the total membership of the board. The board has other powers and duties as provided by the legislature and shall exercise its powers under the policies, rules, standards, and conditions, not inconsistent with this section, that the legislature provides. The board shall complete its work on the reapportionment and file its order with the secretary of state not later than August 31 of the same year. If the Judicial Districts Board fails to make a statewide apportionment by that date, the Legislative Redistricting Board established by Article III, Section 28 , of this constitution shall make a statewide reapportionment of the judicial districts not later than the th day after the final day for the Judicial Districts Board to make the reapportionment. In modifying any judicial district, no county having a population as large or larger than the population of the judicial district being reapportioned shall be added to the judicial district. The legislature may provide for the effect of a reapportionment made by the board on pending cases or the transfer of pending cases, for jurisdiction of a county court where county

court jurisdiction has been vested by law in a district court affected by the reapportionment, for terms of the courts upon existing officers and their duties, and for all other matters affected by the reapportionment. The legislature may delegate any of these powers to the board. The legislature shall provide for the necessary expenses of the board. District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body. District Court judges shall have the power to issue writs necessary to enforce their jurisdiction. The District Court shall have appellate jurisdiction and general supervisory control over the County Commissioners Court, with such exceptions and under such regulations as may be prescribed by law. There shall be a Clerk for the District Court of each county, who shall be elected by the qualified voters and who shall hold his office for four years, subject to removal by information, or by indictment of a grand jury, and conviction of a petit jury. In case of vacancy, the Judge of the District Court shall have the power to appoint a Clerk, who shall hold until the office can be filled by election. See Appendix, Note 1. In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature. No judge shall sit in any case wherein the judge may be interested, or where either of the parties may be connected with the judge, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when the judge shall have been counsel in the case. When the Supreme Court, the Court of Criminal Appeals, the Court of Appeals, or any member of any of those courts shall be thus disqualified to hear and determine any case or cases in said court, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause or causes. When a judge of the District Court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case; or upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law. And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law. This disqualification of judges of inferior tribunals shall be remedied and vacancies in their offices filled as may be prescribed by law. An information is a written instrument presented to a court by an attorney for the State charging a person with the commission of an offense. The practice and procedures relating to the use of indictments and informations, including their contents, amendment, sufficiency, and requisites, are as provided by law. The presentment of an indictment or information to a court invests the court with jurisdiction of the cause. Grand and petit juries in the District Courts shall be composed of twelve persons, except that petit juries in a criminal case below the grade of felony shall be composed of six persons; but nine members of a grand jury shall be a quorum to transact business and present bills. In trials of civil cases in the District Courts, nine members of the jury, concurring, may render a verdict, but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. When, pending the trial of any case, one or more jurors not exceeding three, may die, or be disabled from sitting, the remainder of the jury shall have the power to render the verdict; provided, that the Legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict. There shall be established in each county in this State a County Court, which shall be a court of record; and there shall be elected in each county, by the qualified voters, a County Judge, who shall be well informed in the law of the State; shall be a conservator of the peace, and shall hold his office for four years, and until his successor shall be elected and qualified. He shall receive as compensation for his services such fees and perquisites as may be prescribed by law. The County Court has jurisdiction as provided by law. The County Judge is the presiding officer of the County Court and has judicial functions as provided by law. County court judges shall have the power to issue writs necessary to enforce their jurisdiction. County Courts in existence on the effective date of this amendment are continued unless otherwise provided by law. When the judge of the County Court is disqualified in any case pending in the County Court the parties interested may, by consent, appoint a proper person to try said case, or upon their failing to do so a competent person

may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law. The County Court shall hold terms as provided by law. Prosecutions may be commenced in said court by information filed by the county attorney, or by affidavit, as may be provided by law. Grand juries empaneled in the District Courts shall inquire into misdemeanors, and all indictments therefor returned into the District Courts shall forthwith be certified to the County Courts or other inferior courts, having jurisdiction to try them for trial; and if such indictment be quashed in the County, or other inferior court, the person charged, shall not be discharged if there is probable cause of guilt, but may be held by such court or magistrate to answer an information or affidavit.

Chapter 9 : Individual Rights vs The Common Good by Steven Budzinski on Prezi

The Founding Fathers, the framers of the Constitution, wanted to form a government that did not allow one person to have too much control. With this in mind, they wrote the Constitution to provide for a separation of powers, or three separate branches of government. Each branch has its own.

Or in other words, whether the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction of one executive and judicial; or whether they should continue thirteen confederated republics, under the direction and controul of a supreme federal head for certain defined national purposes only? This enquiry is important, because, although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it. This government is to possess absolute and uncontroulable power, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section 8th, article 1st, it is declared "that the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States; or in any department or office thereof. It is as much one complete government as that of New-York or Massachusetts, has as absolute and perfect powers to make and execute all laws, to appoint officers, institute courts, declare offences, and annex penalties, with respect to every object to which it extends, as any other in the world. So far therefore as its powers reach, all ideas of confederation are given up and lost. It is true this government is limited to certain objects, or to speak more properly, some small degree of power is still left to the states, but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being executed, all that is reserved for the individual states must very soon be annihilated, except so far as they are barely necessary to the organization of the general government. The powers of the general legislature extend to every case that is of the least importance--there is nothing valuable to human nature, nothing dear to freemen, but what is within its power. It has authority to make laws which will affect the lives, the liberty, and property of every man in the United States; nor can the constitution or laws of any state, in any way prevent or impede the full and complete execution of every power given. The legislative power is competent to lay taxes, duties, imposts, and excises;--there is no limitation to this power, unless it be said that the clause which directs the use to which those taxes, and duties shall be applied, may be said to be a limitation: No state legislature, or any power in the state governments, have any more to do in carrying this into effect, than the authority of one state has to do with that of another. In the business therefore of laying and collecting taxes, the idea of confederation is totally lost, and that of one entire republic is embraced. It is proper here to remark, that the authority to lay and collect taxes is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in process of time draw all other after it; it is the great mean of protection, security, and defence, in a good government, and the great engine of oppression and tyranny in a bad one. This cannot fail of being the case, if we consider the contracted limits which are set by this constitution, to the late [state? No state can emit paper money--lay any duties, or imposts, on imports, or exports, but by consent of the Congress; and then the net produce shall be for the benefit of the United States: Every one who has thought on the subject, must be convinced that but small sums of money can be collected in any country, by direct taxe[s], when the foederal government begins to exercise the right of taxation in all its parts, the legislatures of the several states will find it impossible to raise monies to support their governments. Without money they cannot be supported, and they must dwindle away, and, as before observed, their powers absorbed in that of the general government. It might be here shewn, that the power in the federal legislative, to raise and support armies at pleasure, as well in peace as in war, and their controul over the militia, tend, not only to a consolidation of the government, but the destruction of liberty. The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as Congress may from time to time ordain and establish. The powers of these courts are very extensive; their jurisdiction comprehends all civil causes, except such as arise between citizens of the same state; and it extends to all cases in law and equity arising under the

constitution. One inferior court must be established, I presume, in each state, at least, with the necessary executive officers appendant thereto. It is easy to see, that in the common course of things, these courts will eclipse the dignity, and take away from the respectability, of the state courts. These courts will be, in themselves, totally independent of the states, deriving their authority from the United States, and receiving from them fixed salaries; and in the course of human events it is to be expected, that they will swallow up all the powers of the courts in the respective states. How far the clause in the 8th section of the 1st article may operate to do away all idea of confederated states, and to effect an entire consolidation of the whole into one general government, it is impossible to say. The powers given by this article are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be necessary and proper, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and definite [indefinite? Suppose the legislature of a state should pass a law to raise money to support their government and pay the state debt, may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this constitution, are the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of the different states to the contrary notwithstanding. It is not meant, by stating this case, to insinuate that the constitution would warrant a law of this kind; or unnecessarily to alarm the fears of the people, by suggesting, that the federal legislature would be more likely to pass the limits assigned them by the constitution, than that of an individual state, further than they are less responsible to the people. But what is meant is, that the legislature of the United States are vested with the great and uncontroulable powers, of laying and collecting taxes, duties, imposts, and excises: And are by this clause invested with the power of making all laws, proper and necessary, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the state governments, and reduce this country to one single government. And if they may do it, it is pretty certain they will; for it will be found that the power retained by individual states, small as it is, will be a clog upon the wheels of the government of the United States; the latter therefore will be naturally inclined to remove it out of the way. Besides, it is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with power, are ever disposed to increase it, and to acquire a superiority over every thing that stands in their way. This disposition, which is implanted in human nature, will operate in the federal legislature to lessen and ultimately to subvert the state authority, and having such advantages, will most certainly succeed, if the federal government succeeds at all. It must be very evident then, that what this constitution wants of being a complete consolidation of the several parts of the union into one complete government, possessed of perfect legislative, judicial, and executive powers, to all intents and purposes, it will necessarily acquire in its exercise and operation. University of Chicago Press,