

# The Role of the Judiciary

## Overview

In this lesson, students learn about the judicial system, aka the judiciary. First, students read and discuss an article on the role, structure, and principles of the judiciary. Next, they participate in a Civil Conversation on the reading. In this structured discussion method, under the guidance of a facilitator (the teacher), participants are encouraged to engage intellectually with challenging materials, gain insight about their own point of view, and strive for a shared understanding of issues.

## Standards and Topics

- CCSS.ELA-LITERACY.SL.9-10.1.A  
Come to discussions prepared having read and researched material under study; explicitly draw on that preparation by referring to evidence from texts and other research on the topic or issue to stimulate a thoughtful, well-reasoned exchange of ideas.
- CCSS.ELA-LITERACY.SL.9-10.1.C  
Propel conversations by posing and responding to questions that relate the current discussion to broader themes or larger ideas; actively incorporate others into the discussion; and clarify, verify, or challenge ideas and conclusions.
- CCSS.ELA-LITERACY.SL.9-10.1.D  
Respond thoughtfully to diverse perspectives, summarize points of agreement and disagreement, and, when warranted, qualify or justify their own views and understanding and make new connections in light of the evidence and reasoning presented.

**Topics:** judicial branch, U.S. Constitution; due process; equal protection; judicial independence

## Objectives

Students will be able to:

1. Explain the nature and importance of ordered liberty, the rule of law, equal protection, and due process.
2. Cite examples in U.S. history of the failure of the rule of law.
3. State a reasoned opinion on whether judicial review belongs in the American constitutional system.
4. Participate in Civil Conversation, which will enable them to:
  - a. Gain a deeper understanding of a controversial issue.
  - b. Use close reading skills to analyze a text.
  - c. Present text-based claims.
  - d. Develop speaking, listening, and analytical skills.
  - e. Identify common ground among differing views.

## Materials

**Handout A: The Role of the Judiciary** (one per student)

**Handout B: Civil Conversation Guide** (one per student)

## Procedure

### I. Focus Discussion

- A. Hold a brief discussion by asking students: Think of an example when you either experienced unfair treatment yourself or when you witnessed it happening to someone else. What made the treatment unfair? (*Accept reasoned responses.*) How could it have been made fair? (*Accept reasoned responses and look for students wanting the same rules applied to everyone equally, as well as wanting a neutral, unbiased person to resolve their conflicts.*)
- B. Tell students that today they will learn more about how people rely on judges and courts to make fair, unbiased decisions to resolve conflicts and to uphold the laws for everyone.

### II. Reading: The Role of the Judiciary

- A. Briefly provide students with an overview of the purpose and rationale of the Civil Conversation activity. Use the Overview above to help you.
- B. Civil Conversation Guide
  1. Distribute a copy of the Civil Conversation Guide to each student to complete as they read the Role of the Judiciary handout. (Each student should fill in his/her own guide.)

### III. Activity: Civil Conversation

- A. Divide the class into groups of 3–4 students. You may want to have each group select a leader who will get the discussion started, ensure the group stays on-task, and finishes on time.
- B. Determine how much time the groups have to complete the discussion. (Depending on the length of the reading and how experienced your students are in student-directed discussion.)

**Time:** Conversations for classroom purposes should have a time limit, generally ranging from 15 to 45 minutes and an additional five minutes to reflect on the effectiveness of the conversations. The reflection time is an opportunity to ask any students who have not spoken to comment on the things they have heard. Ask them who said something that gave them a new insight that they agreed or disagreed with. Consider the length/difficult of the text(s) students will use and how experienced in student-directed discussion your students are in determining the time.

**Small Groups:** This discussion strategy is designed to ensure the participation of every student. Groups of 3-4 students are ideal. If you are scaffolding text for various reading levels, group students who will use the same text.

- C. Review the rules of a Civil Conversation (listed under Step 3 on the Guide) and direct the groups to follow the instructions on the Guide to get started.
- D. Let groups know you will be circulating to listen in on their conversations and that each person in a group is expected to participate. The goal is for everyone to contribute equally to the conversation.
- E. If necessary, remind groups of the time and urge them to move to the next steps.

#### IV. Assessment/Closure

- A. After the groups have completed their discussions, debrief the activity by having the class reflect on the effectiveness of the conversation:

What did you learn from the Civil Conversation?

What common ground did you find with other members of the group?

Conclude the debriefing by asking all participants to suggest ways in which the conversation could be improved. If appropriate, have students add the suggestions to their list of conversation rules.

- B. For assessment, look for the following on each student's Civil Conversation Guide:

Step 2 - A B: Basic understanding of text.

Step 2 - C D: Text-based arguments.

Step 2 - E: Appropriate and compelling questions about the text.

Step 3 - A: Level of participation (should be "about the same as others").

Step 3 - B: Answer is appropriately related to topic/issue presented in text.

Step 3 - C D: Specificity/text-based.

- C. In addition, you may want to collect the article/text students used to assess the annotations they made in terms of connections to prior knowledge/experience, questions they had while reading, and comments they made.

# The Role of the Judiciary



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For the American constitutional system to work, citizens must accept the idea of ordered liberty. This means that citizens must agree to exercise their liberty within the rule of law, or the fair application of the law to the powerful and powerless alike. Without the rule of law, the rights of an individual could easily be denied by the government or fellow citizens. The rule of law protects individual rights, sets limits on actions that might interfere with those rights, settles conflicts that could cause harm, and punishes wrongdoing.

The rule of law has always had a central role in our constitutional system. The Constitution consists of laws designed to define governmental power and place limits on that power. The judicial branch has the power to make sure that laws passed by Congress do not violate the Constitution. The executive branch must comply with and enforce the laws passed by Congress.

The rule of law in the United States embodies two principles that are fundamental to achieving justice: equal protection and due process. Equal protection seeks to provide everyone with the same opportunity and fair treatment, regardless of race, religion, ethnicity, national origin, gender, sexual orientation, or physical capacity. It means that all people should have the right to compete equally for society's benefits such as jobs, government contracts, housing, and public accommodations.

Due process requires that police and courts follow fair procedures when enforcing the law and making judicial decisions. Due process in law enforcement, for example, requires police to have certain grounds to make arrests, warn people about their rights when arrested, and use only reasonable force. Courts, for example, must give people accused of crimes adequate notice of the charges and hearing dates, the right to an attorney, and the right to confront witnesses. Certain due process rights also apply to legislative and administrative actions. Without due process rights it would be much easier for government to overstep its authority and violate individual rights.

Federal, state, and local courts handle all constitutional, criminal, and civil cases. Criminal courts try people accused of committing crimes, everything from murder to shoplifting. Civil courts try a wide variety of cases — contract disputes, torts (civil wrongs such as negligence and

fraud), landlord-tenant conflicts, and claims that parties have violated civil laws (such as bans on discrimination in housing). Federal, state, and local law-enforcement agencies, such as the FBI and state and local police, enforce the law.

Citizens rely on America's judicial branch and extensive legal system to pursue wrongdoers, resolve conflicts, and interpret the law. Some critics believe that Americans file too many lawsuits and resort to the legal system when other means are available such as negotiation, mediation, and legislation. They argue that America's legal system is enormously costly in time and money. They worry that huge verdicts and lawyers' fees raise the costs of goods and services to consumers. Others defend the system. They argue that it offers the best chance of a fair result in resolving disputes and setting standards for future conduct. The costs of the system are necessary, they argue, because law and legal procedures can be complex, requiring both time and expertise. They maintain that huge verdicts are relatively rare and can be modified through appeal.

## Breakdown in the Rule of Law

Americans do not always adhere to the rule of law. During America's western expansion, vast territories had little or no effective law enforcement and no established courts. Settlers fended for themselves and were often the victims of thieves, robbers, and murderers. In some cases, vigilante organizations arose to establish order. A vigilante is a private citizen who enforces the law on his or her own, often described as someone who "takes the law into their own hands." In other cases in U.S. history, vigilantes themselves broke the law and were a destructive force. For example, in many areas of the South after the Civil War and well into the 20th century, the Ku Klux Klan and other hate organizations violently terrorized thousands of black citizens and denied them their rights. Local authorities often looked the other way and, in some cases, aided the terrorists.

American cities, too, have suffered periods of lawlessness. Riots against the military draft in New York City during the Civil War left hundreds dead. With the passage of Prohibition, millions of Americans ignored the law and went on consuming and buying and selling alcohol. This led to the rise of organized crime, which supplied illegal alcohol and bribed public officials and law-enforcement officers not to prosecute the lawbreakers. Even after the end of Prohibition, organized crime in many American cities continued to thrive, branching out into gambling, extortion, and other criminal activities.

Sometimes judicial protections have been denied to certain citizens. In early America, women had few legal protections. Until slavery was abolished, both enslaved and free black Americans were denied access to courts for most purposes, and in some regions of the country, African Americans had few legal protections well into the 20th century. During World War II, thousands of American citizens of Japanese descent were forced without due process into internment camps because they were considered security risks. Throughout our history, because of the high cost of legal services, many poor people have lacked the means to take advantage of the judicial protections that exist.

Many of these injustices have been addressed, frequently by excluded groups using political processes and the judicial system itself to secure legal protections. Congress recognized the injustice of internment of Japanese Americans and passed laws apologizing and granting reparations to those who had been forced into the camps. Today, women have the same legal rights as men, and the civil rights movement helped secure greater equality under the law for African Americans. But women, African Americans, and other groups continue to face many forms of discrimination today.

## Judicial Review and Independence

Central to the American legal system is the state and federal courts' power of judicial review. This means that courts can review the actions of the executive branch, legislatures, and lower courts to determine whether they are lawful and constitutional. By being able to check the actions of government, the power of government is limited. Some legal theorists have argued that the power of judicial review is undemocratic because judges can overturn the actions of the legislature, which is elected by the people. Federal judges and many others are not elected, but appointed. Why, ask these critics, should judges have right to frustrate the will of the people? And the Constitution itself does not include the term *judicial review*. Instead, the Supreme Court articulated its power of judicial review in an 1803 case.

Other legal theorists view the power of judicial review as essential to American constitutional democracy. Without it, they argue, government power can be used to violate minority rights and constitutional principles. The system needs an institution that can stop such violations, and the courts serve that function. For example, they argue that the Supreme Court was justified in 1954 when it ruled that states laws allowing school segregation based on race were unconstitutional. In fact, the principle of judicial review is so ingrained in our judiciary, few question its legitimacy.

The framers of the Constitution insisted on creating an *independent* judiciary. They wanted courts to have the power to check the other branches and not be too swayed by shifts in public opinion. For this reason, federal judges are appointed for life terms. Having to face elections and the realities of politics could influence judges to make decisions which would please the majority rather than serve the Constitution or minority rights.

## Discussion

1. Why are due process and equal protection so important to the rule of law?
2. What are the consequences of a breakdown of the rule of law?

# CIVIL CONVERSATION GUIDE

Name: \_\_\_\_\_

Class: \_\_\_\_\_

Title of Reading: \_\_\_\_\_

## Step 1: Read.

- A. Read through the entire selection without stopping to think about any particular section.
- B. Re-read the selection and annotate (“talk to”) the text:
- Underline the main/most important points. You can comment on these points in the margins.
  - Circle words or phrases that are unknown or confusing to you.
  - Write down any questions you have in the margin labeling them with a “?”.
  - Draw an ➡ in the margin next to text that connects to something you know from outside the text. Note what the connection is, such as a news item or personal experience.

## Step 2: Think about the reading to prepare for the discussion.

A. This reading is about...	B. The MAIN POINTS are:
C. In the reading, I agree with:	D. In the reading, I disagree with:

E. What are two questions about this reading that you think could be discussed? (The best questions for discussion are ones that have no simple answer and that can use the text as evidence.)

1.

2.

### Step 3: Discuss and listen.

#### RULES FOR CIVIL CONVERSATION

1. Everyone in your group should participate in the conversation.
2. Listen carefully to what others are saying.
3. Ask clarifying questions if you do not understand a point raised.
4. Be respectful of what others are saying.
5. Refer to the text to support your ideas.

You will have \_\_\_\_\_ minutes to discuss. Your goal is to engage with each other and the text to gain insight about your own point of view while finding a shared understanding of the issue.

At the end of the reading, you will likely find at least one discussion question. Use that question to get started. If time permits, you can also discuss questions you came up with in Section E above.

If the reading does not provide discussion questions, choose questions to discuss from Section E.

### Step 4: After your conversation...

A. Compared to others in your group, did you speak? \_\_\_ Less than, \_\_\_ About the same as, \_\_\_ More than others.

B. Note some of the ways you added to the discussion.

C. What evidence did you use from the text to add to the discussion? Why was this evidence helpful?

D. What did you learn about the topic from the Civil Conversation? (Be sure to reference the text!)