

CANON LAW: MEDIEVAL EUROPE'S LEGAL SYSTEM

THE ROMAN CATHOLIC CHURCH CREATED A COMPREHENSIVE LEGAL SYSTEM IN WESTERN EUROPE. CALLED "CANON LAW," THIS SYSTEM OF MEDIEVAL RELIGIOUS LAW DEVELOPED MANY LEGAL PRINCIPLES AND PROCEDURES THAT WESTERN EUROPEAN NATIONS EVENTUALLY ADOPTED INTO THEIR OWN LEGAL SYSTEMS.

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A painting of Pope Leo X (center) meeting with England's King Henry VIII (left of the pope). Henry VIII broke from the Catholic Church in 1534, making the church's canon law no longer in force in England.

Christian doctrine holds law in deep respect: "So the law is holy, and the commandment is holy and righteous and good." (Romans 7:12) Early Christians saw God as a law-maker and judge.

Christians living in the Roman Empire usually followed Roman laws, but not always. Christians believed an immoral law was not binding and may even require one to disobey it. They disobeyed the Roman law against practicing the Christian religion.

Conditions changed greatly when Constantine, the emperor of the eastern part of the Roman Empire, converted to Christianity. In A.D. 313, he proclaimed it legal to practice all religions. About 80 years later, another emperor made Christianity the official state religion.

As Christianity expanded, church leaders saw a need to settle disagreements on religious beliefs, worship practices, penalties for sins, and other matters. The leaders met at councils and began to make laws for the church.

Individuals collected these council laws, along with earlier ones developed by local Christian communities. These unofficial written collections of church laws became known as "canons," from a Greek word, meaning a rule or standard.

In 533, Justinian, one of Constantine's successors, ordered the first major compiling of Roman laws. Christian canonists (those who assembled the canons) added many legal concepts from Justinian's code of Roman law to their own collections of church laws.

By the seventh century, canon law included legal ideas from all over Christian Western Europe. ➤

LAW

This edition of *Bill of Rights in Action* looks at issues related to law. The first article examines canon law, the system of church law in the Middle Ages that is one of the foundations of modern Western legal systems. The second article explores the life of Oliver Cromwell, who upended the English monarchy and attempted to install a new system of government. The last article looks at two influential pre-Civil War U.S. senators, John C. Calhoun and Daniel Webster, who had vastly different views on our national government.

World History: Canon Law: Medieval Europe's Legal System

World History: Oliver Cromwell: The Lord Protector

U.S. History: Calhoun and Webster: Two Visions of the Federal Union

For example, Germanic tribes contributed their emphasis on the importance of sacred oaths.

A few centuries later in 1054, Christianity split between the Eastern Orthodox Church and the Roman Catholic Church in Western Europe. The Catholic Church's canon law continued to expand, add new sources, and gain acceptance in the West.

The Revolution in Canon Law

About 1075, Pope Gregory VII proclaimed that the Roman Catholic Church was independent of the control of emperors, kings, or other secular (non-religious) authorities. He also asserted that the authority of the pope, as the representative of Christ on earth, was superior to any secular ruler. In addition, Pope Gregory declared that the pope in Rome was the sole and supreme head of the Catholic Church. For the first time, he decreed the power of the pope to "create new laws in accordance with the needs of the time." These papal (pope's) laws were in addition to those made by church councils.

Another source of canon law, which gained increasing importance in Pope Gregory's time, was the papal "decretal." This was a decision written by a pope in answer to a question on Catholic religious belief or an appeal from a church court.

In the mid-12th century, an Italian monk named Gratian completed the first systematic organization and analysis of Catholic canon law. Gratian's work is known as the *Decretum*, a Latin word that refers to the collection of canons. He intended not only to summarize canon law but to resolve apparent contradictions within it.

Gratian studied the summaries of canon law and documents from other church authorities that extended over a thousand years of Christian history. He also examined parts of Roman law.

Gratian's method of analyzing canon law was revolutionary. He

generally started a topic with a question. For example, "Do all accusations against an alleged criminal have to be in writing?" He then assembled what canon authorities said on both sides of the question. This created what he called a "disharmony," or contradiction.

Gratian looked to natural law to resolve the disharmony. This called for humans to use their God-given ability to reason to discover God's will. Using his reasoning, Gratian worked out resolutions to the disharmonies. In the case of the question above, he concluded that all the authorities actually supported written criminal accusations.

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Gratian was also interested in discussing how individuals should act when confronted with moral dilemmas in canon law. He gave the following example from the writings of a pope:

1. A man takes an oath before God to keep his friend's secrets.
2. Afterward, the friend reveals that he is planning to kill his lover's husband.
3. The man has two choices: Break his oath by warning the husband or become an accomplice to murder. Both are sins in canon law.

What should the man do? Gratian concluded that the man could not escape from committing a sin. Therefore, the man must choose "the lesser of two evils." This was an ancient principle of ethics that Gratian borrowed from the Greeks and Romans.

How was one to choose the lesser evil? Gratian cited a church council that said, "by the sharpness of pure reason." Gratian himself did not offer what he thought the lesser evil was in his example.

After Gratian completed the *Decretum* around 1150, it became the standard university textbook for Catholic canon law. His book had to be hand-copied since the printing press was not invented in Europe for another 300 years.

As the *Decretum* passed from one copyist to another, they added new canon law material over the years. The copyists also included commentators' views on Gratian's work. For example, nearly all the commentators disagreed that moral dilemmas existed with only a choice between two evils. In the dilemma discussed above, the commentators said the man should have tried to persuade his friend not to go through with the murder.

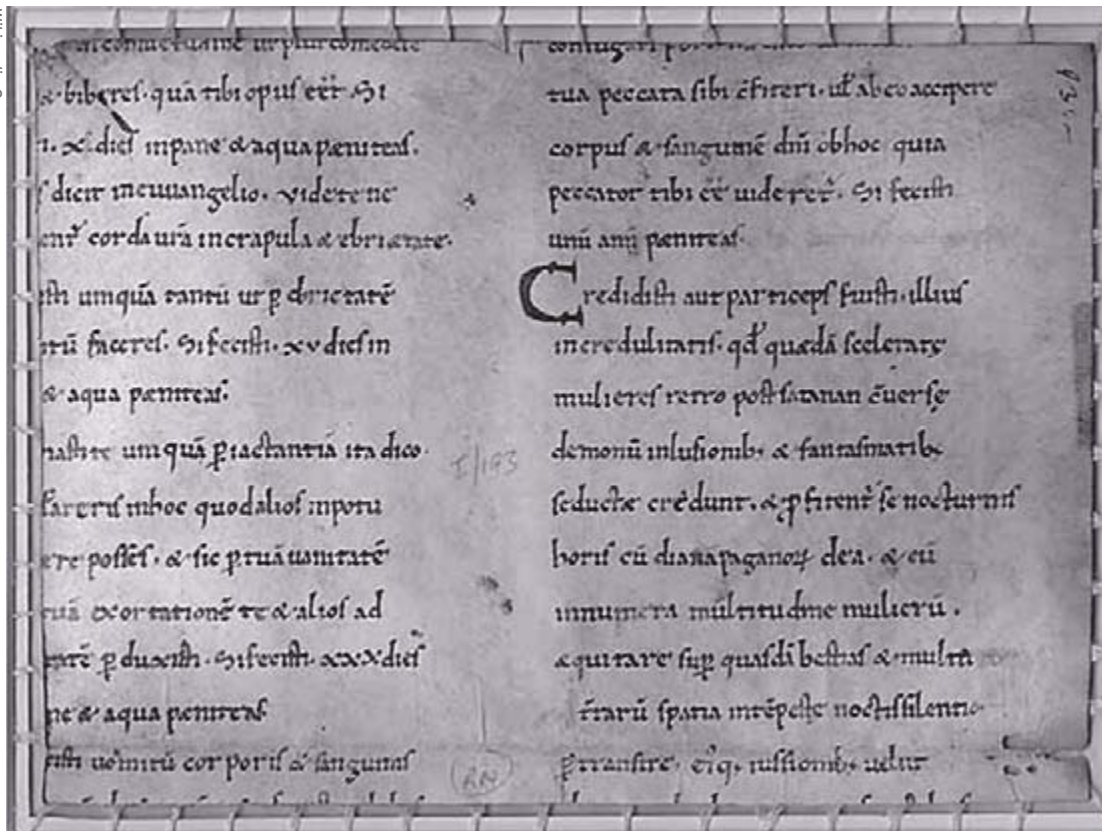
In 1234, the first collection of papal decretals was completed. That together with the expanded *Decretum* provided the basic canon law of the Catholic Church for the next 700 years.

Medieval Canon Law

By about 1250, the Catholic Church's rule of law extended through all of Western Europe. Its principles and legal procedures related to religious, civil, and criminal matters. Below is a sample of the canon law that functioned throughout Western Europe during the Middle Ages.

Pope and Church

The medieval canon law confirmed that the pope was the supreme authority of the Roman



A page from the *Decretum*, a compilation of canon law first published in the 12th century.

Catholic Church for life. Among other powers, the pope operated the church, decided religious disputes, served as supreme judge, and excommunicated Christians refusing to accept church beliefs.

The pope did not control all matters. For example, kings usually chose the bishops of the church with the approval of the pope.

Much canon law concerned church rules and regulations, such as how to ordain priests. But it also covered other areas, and it was the only legal system that functioned everywhere in Western Europe. In the early Middle Ages, the royal law of different kings mainly applied to the land-owning nobility. Town, manor, feudal, and tribal law were fragmented and inconsistent.

Marriage and Family

Marriage and family fell within the jurisdiction of canon law. Canon law set the conditions for a valid marriage.

Canon law assumed the husband to be the head of household with the authority to reasonably discipline his wife. An illegitimate child born outside of marriage had fewer rights, but could gain full rights if the parents got married.

Divorce was never allowed because it would break the sacrament of marriage. A man and wife, however, were permitted to separate on certain grounds such as grave cruelty. Also, a marriage could be annulled. This meant that the marriage was never legal to begin with because of some fault such as lack of consent.

Economic Matters

Canon law pioneered the formation of corporations. During medieval times, corporations included towns, churches, monasteries, schools, hospitals, and similar associations. Canon law defined corporation terms, the duties of officers, and rights of the members. Later,

businesses adopted the legal structure of the canon law corporation.

Canon property law regulated the extensive holdings of the church. This included buildings, enterprises, and up to one-third of the land in Western Europe. Much of the land was donated by those wanting to aid the church or perhaps ease their way to heaven.

The canon law of property, however, went far beyond church possessions. For example, according to Gratian's "rule of restitution," someone's property taken from him by force, threat, or fraud had to be restored to him. But the victim had to go through the legal system and not take the law into his own hands.

Canon law said that oral and written contracts were binding. They were based on a promise or oath before God. Failure to fulfill a contract meant breaking one's word, which was an act of perjury and a sin. ➤

Even so, canon law held that not all contracts were valid. If the agreement between two persons was not reasonable and fair to one, no contract existed. Similarly, canon law condemned “shameful” profit as *turpe lucrum* (“filthy lucre”).

Canon law banned usury: any profit from the lending of money or the sale of goods on credit with interest. Usury was also a sin. As commerce expanded, however, exceptions appeared in canon law. For instance, a lender could charge a late fee if the borrower did not return the loaned money on time.

Sin and Crime

For much of church history, crimes and sins were considered one. After 1100, canon law recognized a division of court jurisdiction between church and secular authorities. Church courts would deal with sins such as usury. Royal and other secular courts would handle crimes like robbery.

Canon law, however, recognized a special category of “criminal sins.” These were intentional and morally sinful acts like adultery, witchcraft, usury, and destruction of church property. Those accused of such offenses were tried in church courts.

In addition, canon law claimed “benefit of clergy.” This meant that the clergy — monks, nuns, priests, bishops, and archbishops — could only be tried in church courts for secular crimes.

Court Procedures

Canon law courts used certain court procedures that resemble what we today call “due process of law.” These procedures included testimony under oath, representation by a lawyer, rules of evidence, and a written trial record.

Canon law allowed self-defense to excuse a violent act and adopted a rule against double jeopardy. It also did not allow a trial for an act that had not been prohibited when it was committed (just as the U.S. Constitution bans *ex post facto* laws).

THE CASE OF THE MURDEROUS MONK

Facts: Two robbers broke into a monastery, clubbed two monks unconscious, and began to steal their clothes. The monks recovered, overpowered the robbers, and tied them up. One monk left to notify his superior. The other monk guarded the robbers. When the robbers started to free themselves, the monk killed the robbers, fearing they would kill him.

Decision: This was an actual medieval canon law case. The murderous monk claimed self-defense. The case was appealed to Pope Alexander III who reigned 1159–1181. He decided that tying up the robbers and killing them were criminal sins.

Reasoning: Pope Alexander reasoned that both monks had violated their vow of meekness and the discipline of their order when they tied up the robbers. He said the monks should have tried to escape as soon as they regained their ability to do so. He further ruled that self-defense did not apply because of the “preceding guilt” of tying up the robbers.

Penance and Punishment

The church was more concerned about saving a sinner’s soul than punishment. Canon law called for penance from the sinner such as doing acts of charity or going on a pilgrimage to a holy site. Royal and other secular courts were concerned with law and order, so they handed out harsh physical punishments, including mutilation and the death penalty.

The church never imposed the death penalty. It handed over convicted heretics, those who rejected Catholic teachings, to secular authorities for execution. The ultimate church punishment under canon law was excommunication. This

denied the sinner the sacraments and condemned the person to eternal suffering in hell.

Church and State in Conflict

Medieval canon law held that church authority was greater than that of the secular state; the pope was superior to a king. As kings increasingly asserted their powers and laws, however, conflicts arose between church and state.

In 1164, King Henry II of England declared that any clergy member accused of a felony, such as robbery or murder, would first be tried in a church court. If convicted, the felon must be handed over to a royal court for sentencing under the king’s law.

King Henry’s declaration violated canon law in two ways. First, under “benefit of clergy,” any clergyman accused of secular crime had to be tried and sentenced only in a church court. Second, if the church court imposed one sentence and the king’s court ordered another, this would violate the canon law rule against double jeopardy.

King Henry and his hand-picked Archbishop of Canterbury, Thomas Becket, argued for several years over which court had jurisdiction in sentencing those clergy convicted of felonies. Also at stake was King Henry’s claim that he, not the pope, was the supreme head of the church in England.

One day, out of frustration with Archbishop Becket, King Henry shouted, “Will no one rid me of this pestilential [poisonous] priest?” Henry’s guards overheard him and on their own murdered Becket inside the Canterbury Cathedral. Henry was shocked and remorseful. In 1172, he withdrew his declarations and submitted to the authority of the pope.

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In the 1500s, the Protestant Reformation brought an end to the Catholic canon law monopoly in Western Europe. In England, King Henry VIII broke from the church

after the pope refused to annul his marriage so he could marry another. In 1534, King Henry declared the supremacy of king over the pope in England. Other European nations followed suit. Although Catholic canon law no longer controlled Western Europe, nations adopted many of its legal principles and procedures.

Medieval canon law helped preserve Roman and other ancient law sources and also developed a comprehensive modern legal system. In many ways, Catholic canon law became one of the foundations for secular law systems in the West today.

For Discussion and Writing

1. How did Pope Gregory VII and Gratian bring about a revolution in medieval canon law?
2. How would you have decided “The Case of the Murderous Monk”?
3. In what ways did the medieval canon law serve as a foundation for modern secular law systems in the West today?

ACTIVITY

Medieval Moral Dilemmas

In this activity, students meet in small groups to discuss and decide how to resolve one of the following cases based on actual canon law moral dilemmas. The object is to resolve the dilemma without the person who faces it committing a sin. Or, if the group concludes this is impossible, to choose between “the lesser of two evils.”

- A. The Poor Parents Dilemma.** A man from a very poor family takes a sacred vow to leave the worldly life and enter a monastery.
 - If the man fulfills his vow, he leaves his poor and ailing parents behind who depend on him. He sins by violating the Fifth Commandment: “Honor your father and your mother.”
 - If the man fails to fulfill his vow and return to his parents, he sins by breaking his vow, an act of perjury.
- B. The Madman’s Sword Dilemma.** A man leaves his sword for safekeeping with another man who swears an oath before God to return it when the owner asks for it. Afterward, the owner of the sword becomes insane. He returns to get his sword, angrily threatening to kill someone he does not name.
 - If the safe keeper refuses to return the sword, he sins by breaking his sacred oath, becoming a perjurer and thief.
 - If the safe keeper hands over the sword, he sins by enabling the madman to murder another.
- C. The Usurer’s Money Dilemma.** A usurer deposits money with a friend who swears an oath before God to return it upon request.
 - If the friend returns the money, he sins by enabling the “spiritual death” of the usurer who will suffer forever in hell.
 - If the friend does not return the money, he sins by violating his sacred oath and keeping what is not his.
- D. The Latrine of the Devil Dilemma.** A woman confesses to her priest that she lives a life of sin, but does not repent (ask for forgiveness). Instead, she asks the priest to offer her the Eucharist (Communion) in church before the others of the village.
 - If the priest denies the Eucharist to the woman during the church service, he sins by betraying the privacy of her confession and allowing the villagers to assume she is a sinful person.
 - If the priest offers the Eucharist to an unrepentant sinner, he “throws the body of Christ into the latrine of the devil,” a sinful act of desecration.
- E. The Hiding Fugitive Dilemma.** A man demands to know from a third party where an enemy is hiding. The third party is actually hiding the enemy in his own house.
 - If the third party reveals the hiding enemy, he sins by committing an act of betrayal.
 - If the third party says he does not know where the enemy is hiding, he sins by lying.

(Teachers: Suggested answers on page 13.)



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OLIVER CROMWELL: THE LORD PROTECTOR

MORE THAN 100 YEARS BEFORE THE AMERICAN REVOLUTION, ENGLAND HAD A REVOLUTION OF ITS OWN THAT BRIEFLY ABOLISHED THE MONARCHY AND ESTABLISHED A REPUBLIC. OLIVER CROMWELL, A MILITARY HERO, RELIED ON HIS BELIEF IN GOD'S WILL TO LEAD THE REPUBLIC.

When King Charles I took the English throne in 1625, Europe was embroiled in what would become known as the Thirty Years War (1618–1648). Charles wanted Parliament to impose taxes to fund the army. Suspicious that Charles might want to aid Catholics in Europe, Parliament refused. Thus began years of clashes between Parliament and the king over taxes.

The clashes also involved religion. As king, Charles headed the Church of England. It had broken away from the Catholic Church in 1534. As a Protestant church, the Church of England did not accept the authority of the Catholic pope, but it did keep many Catholic practices.

The Church of England demanded religious “conformity,” which meant everyone was required to attend its services, worship the same way, and pay tithes to support its operation. King Charles tried to strengthen enforcement of conformity. Some believed he secretly wanted to return England to Catholicism.

Many other Protestant religious groups had arisen and grown critical of the Church of England. Among the most prominent were the Puritans. They wanted to reform or “purify” the Church of England to make it less like the Catholic Church. But the Puritans still wanted church conformity.

Numerous other small Protestant groups, like the Baptists, Quakers, and Ranters, rejected conformity to the Church of England, purified or not. Most of these “dissenters” wanted to elect their own ministers

and rely more on reading the Bible instead of church authorities.

King Charles saw the dissenters as a threat to the Church of England and wanted to suppress them. Many members of Parliament objected. They also opposed what they believed was Charles’ effort to increase “popish practices” in the Church of England.

Tired of clashing with Parliament over taxes and the church, King Charles dissolved (closed) Parliament in 1629, which was his right. But he refused to summon a new one for more than 10 years. Instead, he governed England alone, by his “personal rule.”

Oliver Cromwell

When King Charles finally called a new Parliament in 1640, most of those elected to the House of Commons fiercely opposed the king. One of them was Oliver Cromwell.

Born in 1599, Cromwell had inherited a small landholding. He attended Cambridge University for a while and may have studied law in London. He married in 1620 and had nine children. Due to economic circumstances, he was forced to sell his land and become a tenant farmer, working on the land of another.

Around age 30, Cromwell had a born-again Christian experience that changed his life forever. He became convinced God had a great mission for him to fulfill. As a member of Parliament, Cromwell soon gained the reputation of being a Puritan hothead, attacking the dictatorial rule of King Charles and his policy of church conformity.



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Oliver Cromwell (1599–1658) toppled the English monarchy and set up a republic, with him as Lord Protector.

By 1642, King Charles and Parliament were bitterly divided over what kind of government and what kind of national church England should have. Each side began to recruit an army: the “Cavaliers” for the king and the “Roundheads” (named for their short haircuts) for Parliament.

Parliament authorized Cromwell to form a troop of cavalry even though he had no military experience. Nevertheless, he organized a cavalry unit, insisting that his men be well-trained, disciplined, and godly.

The English Civil War

Soon, the armies clashed, and the English Civil War began. Surprisingly, Cromwell proved to be an excellent cavalry leader, who became a rising star in Parliament’s New Model Army. He became Parliament’s most successful commander. “Give glory, all the glory, to God,” he wrote.

In 1644, Cromwell rose to second in command of Parliament’s army. Two years later, the Cavaliers

suffered complete defeat, and King Charles was captured. Cromwell said this was “none other than the work of God.”

Cromwell tried to negotiate a political and religious settlement that would satisfy King Charles, Parliament, and the army. Cromwell said that he favored a king with limited powers and a Puritan Church of England without conformity. He did not favor extending the right to vote to all adult males for elections to the House of Commons because it “tends to anarchy.”

Cromwell took a much more radical position on the question of dissenting Protestants who wanted to form their own churches. Many in the army were religious dissenters. Cromwell spoke for “liberty of conscience,” permitting toleration of religious dissenters as long as they were peaceful. He believed that each dissenting Protestant group held a part of God’s truth. He did not, however, include Catholics, whose faith was virtually illegal in England.

When King Charles suddenly escaped, Cromwell’s negotiation efforts ended. Charles plotted with the Scots, who feared English domination, to renew the war. Parliament’s forces once again easily defeated those of King Charles’, largely due to Cromwell’s victories. The king was again captured.

The Commonwealth

After the Civil War finally ended in 1648, the army grew increasingly restless. The Puritan-dominated Parliament owed the soldiers back pay and debated disbanding the army. It also passed a law that set up a reformed Church of England without allowing toleration of dissenting Protestants.

The army grew enraged that members of Parliament still wanted to negotiate with King Charles. This provoked some army officers, but not Cromwell, to march their troops into the House of Commons and drive out two-thirds of the members whom they viewed as traitors.

Those left became known as the “Rump” Parliament.

In early 1649, the Rump Parliament put King Charles, “that man of blood,” on trial and ordered his beheading. Cromwell was one of his judges and signed his death warrant, believing the king’s execution was “God’s will.”

The Rump Parliament moved quickly to abolish the monarchy. It then proclaimed England a republic, called the Commonwealth.

The new government consisted of a one-house elected Parliament that chose an executive Council with Cromwell as its chairman. This dramatic overturning of centuries of shared rule by king and a two-house Parliament has been called the English Revolution.

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Army officers worked on a plan of governing. A new Parliament would be elected in May 1649 and then a new one elected every two years. No royalists would be allowed to vote. The plan also called for a state church, but attendance and paying tithes would be voluntary. Worship by dissenters outside the state church would be permitted to all except Catholics.

The Levellers, a political movement active in the army, demanded more radical changes. They wanted

many more people to vote, a written bill of rights, and an end to censorship. The Rump Parliament rejected the Leveller reforms as well as those for liberty of conscience pushed by Cromwell and the army.

For the next few years, Cromwell was back in his cavalry saddle, crushing rebellions by Catholics in Ireland and Presbyterian Protestants in Scotland. On one occasion in Ireland, he ordered the slaughter of defeated rebels, including civilians, as revenge for an earlier Catholic massacre of Protestants.

By 1651, Cromwell had strengthened English rule over Ireland and Scotland (Wales had already been absorbed by England). The Rump Parliament made him commander-in-chief of the army. He returned to England a national military hero.

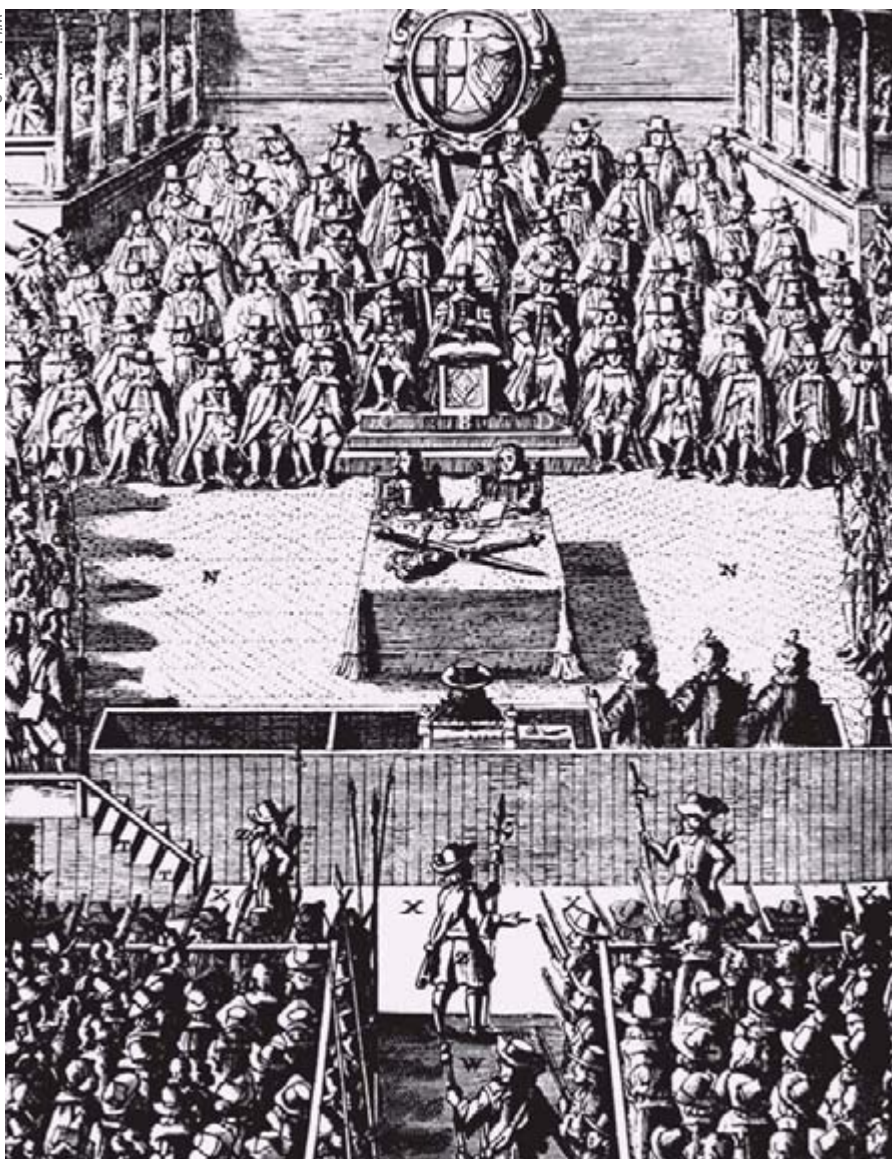
In 1653, the Rump Parliament was still in session, ignoring demands for the election of a new Parliament. Cromwell was angry at his fellow Puritans in Parliament, mainly for their refusal to adopt liberty of conscience for dissenting Protestants.

In April 1653, Cromwell denounced the Rump as a body of “corrupt unjust men.” He ordered his soldiers to expel Parliament members, thus ending a Parliament that had continued in session since before the Civil War.

The Lord Protector

With no king or Parliament to govern, Cromwell took command of a council of military officers and civilian politicians to head the country. The council appointed a temporary Puritan Parliament, which Cromwell said was “called by God to rule with Him and for Him.” Even this hand-picked Parliament failed to reach agreement on liberty of conscience for Protestant dissenters, so it dissolved itself in December 1653.

A group of army officers decided to produce a written constitution, the first in English history. It established a new form of government, called the Protectorate. ►



Parliament set up a special court to try King Charles I. He was convicted and beheaded.

The Protectorate consisted of a Lord Protector and Council sharing power with a single-house Parliament. A new Parliament had to be elected at least once every three years. The right to vote was extended to all male adults who owned a certain amount of property, but excluded Catholics and royalists.

On the key issue of liberty of conscience, the new constitution protected Protestant dissenters in the “profession of their Faith, and exercise of their religion.” Excluded were those who disturbed the peace or practiced “popery” (Catholicism).

Four days after the appointed

Parliament resigned, the army officers who wrote the new constitution proclaimed Cromwell head of state. His full title was His Highness Oliver Cromwell Lord Protector of the Commonwealth of England, Scotland and Ireland. Cromwell likened himself to a policeman, warding off evil and keeping the peace.

As Lord Protector, Cromwell had two major goals. The first was “healing and settling.” This included restoring regularly elected Parliaments, lowering taxes, and other measures to calm the people after years of civil war and political uncertainty.

Cromwell’s second and more controversial goal was “godly reformation.” This meant following God’s will to protect liberty of conscience for Protestants, root out traces of Catholicism in the Church of England, and stop drunkenness, swearing, adultery, and other sins.

Cromwell opposed celebrating Christmas as a sinful Catholic invention. He also believed many public festivals, stage plays, dances, and sports were immoral. But personally he was no prude since he smoked, drank ale, and enjoyed singing, music, and art.

The Protectorate constitution allowed the Lord Protector and Council to pass laws before the new Parliament met. Cromwell and his Council eliminated harsh punishments for minor crimes. They increased the number of primary schools. They created a system to weed out “weak, scandalous, and popish” priests in the Church of England.

When Parliament met in September 1654, Cromwell urged it to pass more laws to further his goals. Most members, however, were critical of the new Protectorate, ignored his agenda, and voted only for weak protection of liberty of conscience.

Just a few months after Parliament first met, the Lord Protector dissolved it. He accused it of “discontentment and division, discontent and dissatisfaction.”

Shortly after he dissolved Parliament, Cromwell issued a Proclamation on Religion. He declared that all Protestants, though they worshipped in different ways, should have “Freedom to practice and exercise the Faith of the Gospel.”

In exercising this freedom, Cromwell continued, the government had a duty to protect all Protestants. He regretted that they had grown bitter, “biting and devouring, hateful and hating one another.” They pursued “unchristian Practices,” he said, such as disrupting public and private religious meetings. He concluded by commanding all to cease such practices

or be prosecuted for disturbing the peace.

Cromwell ultimately wanted to unify all English Protestants into a national church of “godly people.” But in the meantime, he believed it necessary for them to tolerate one another.

Fall of the Republic

At great cost, Cromwell as Lord Protector rebuilt the English navy to enable England to become a major European power. At war with Spain over one of Europe’s never-ending struggles, he sent a fleet to the Caribbean. In the spring of 1655, the Spanish inflicted a major defeat on the fleet, which Cromwell took as a rebuke from God.

The defeat spurred Cromwell to push harder for his godly goals. He wanted to recover the blessing of God for the English, whom Cromwell believed were God’s “chosen people,” like the ancient Jews of the Bible.

Cromwell redoubled his national “godly reformation” effort, enforced by army officers and financed by a heavy tax on royalists. He also pressed for admitting Jews into England for the first time since their expulsion in 1290.

A Second Protectorate Parliament was elected, but the Puritan members still could not agree with Cromwell on liberty of conscience for Protestant dissenters. Parliament wrote a new constitution that provided for a king and asked Cromwell to accept the crown. After a long period of indecision, he turned it down, saying God had destroyed the monarchy forever.

Increasingly, the Lord Protector resorted to tactics beyond the law, such as imprisoning royalists and other enemies without a trial. Parliament grew more hostile. Some accused Cromwell of being a military dictator. In February 1658, he dissolved Parliament once again.

On September 3, 1658, Cromwell died, possibly of malaria. He wanted his eldest son, Richard, to be his successor. The Protectorate Council appointed him as the Lord Protector.

Richard had little political and no military experience, but he tried for almost a year to win over the army and deal with England’s debt with mixed results. In May 1659, army officers stepped in and forced him to resign.

With the people begging for political stability, a new Parliament, including royalists, restored the monarchy. This ended England’s

experiment with a republic. King Charles II, the son of the beheaded king, took the throne in 1660, promising to rule with limited power.

A royalist Parliament in 1661 restored the old system of shared power between king and Parliament as well as conformity to the Church of England. Cromwell’s effort to provide liberty of conscience for Protestant dissenters came to an end.

In power again, royalists dug up Cromwell’s corpse and hanged it. They put his head on a pole atop the Parliament building where it supposedly remained until the end of the reign of Charles II.

For Discussion and Writing

1. Why did Parliament and King Charles I fight a civil war?
2. What was Cromwell’s idea of “liberty of conscience”? Why did he fight for this despite Puritan resistance in Parliament?
3. Why do you think the English experiment with a republic failed?

For Further Reading

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ACTIVITY

‘A Brave, Bad Man’?

Oliver Cromwell had his defenders after he died, especially in the army and among Protestant dissenters. But the royalists were on top again, and the kindest words they had for the Lord Protector were that he was “a brave, bad man.”

Since this stormy period in English history, historians have been deeply divided in judging Cromwell. He remains perhaps England’s most complex historical figure. Below are some positive and negative terms that historians have used to describe him.

1. Meet in groups to discuss Cromwell’s goals, motives, methods, accomplishments, and failures.
2. Choose one or more of the terms below to best describe Cromwell. Use evidence from the article to defend your description.

Positive

sincere man of God
political moderate
advocate for democracy
champion of religious liberty
leader who strengthened England
a brave man

Negative

religious fanatic
political radical
military dictator
hater of Catholics
leader who weakened England
a bad man

CALHOUN WEBSTER: AND

TWO VISIONS OF THE FEDERAL UNION

SOUTH CAROLINA SENATOR JOHN C. CALHOUN SAW THE FEDERAL UNION AS A COMPACT OF STATES. MASSACHUSETTS SENATOR DANIEL WEBSTER SAW IT AS A NATION OF ONE PEOPLE. THEIR DIFFERING VISIONS LED TO HISTORIC DEBATES, BUT UNDERLYING THEM ALL WAS THE QUESTION OF SLAVERY.

The intent of the writers of the Constitution was to create a stronger central government than existed under the old Articles of Confederation. During the ratification of the Constitution, many expressed fears the federal government would expand its powers at the expense of the states.

The Bill of Rights, in the form of 10 amendments, was added to the Constitution to further limit the powers of the federal government. The 10th Amendment attempted to address the concerns of those who wanted the states to act as a check on the powers of the federal government:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

As the issue of slavery heated up before the Civil War, John C. Calhoun and Daniel Webster debated the scope of federal government powers and whether states could nullify (veto) laws passed by a majority in Congress. Calhoun championed states' rights while Webster stood for a nation of one people based on majority rule.

'Philosopher of Nullification'

Born in 1782, John C. Calhoun was the son of a well-off South Carolina farmer who owned slaves. Calhoun graduated from Yale and then studied law. He married his wealthy cousin, became a cotton planter, and when he died in 1850, he owned about 200 slaves.

Calhoun also pursued a career in politics. He was elected to the U.S. House of Representatives in 1810 and was the chief deputy of Speaker of the House Henry Clay. Calhoun was a strong nationalist who pushed for war against Britain in 1812.

After the war, Calhoun supported Henry Clay's "American System," which called for Congress to fund roads, canals, ports and other national improvements. In 1816, he voted for a tariff (a tax on foreign imports) that gave an advantage to American manufacturers.

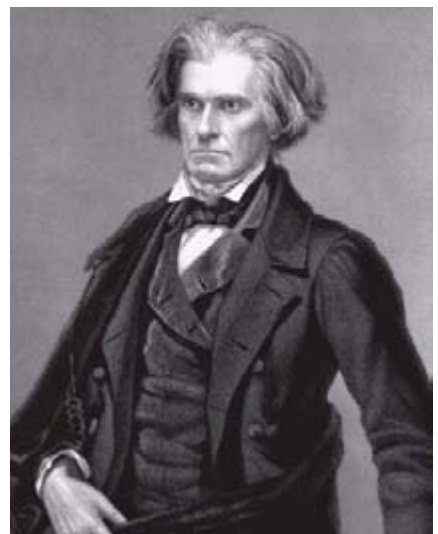
In 1824, Calhoun was elected vice president with John Quincy Adams as president. Calhoun was re-elected vice president in 1828, but this time served with Andrew Jackson, hoping to follow him as president.

As vice president, Calhoun began having second thoughts about his nationalist beliefs. He concluded that Clay's American System and tariffs mainly benefited the North.

Congress increasingly passed "protective tariffs," designed to protect America's new industries in the North from foreign competition. Calhoun realized that they enriched the industrial North, but burdened the agricultural South with high prices.

In 1828, Northern manufacturers persuaded a majority in Congress to pass a new law that sharply increased tariff rates. This further boosted prices on manufactured items needed in the South.

Calhoun and other Southerners were angered. He began to worry that if a Northern majority in Congress could pass a tariff law harmful



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John C. Calhoun (1782-1850), who served as vice president, U.S. senator, and member of Congress in his long political career, was the leading advocate for states' rights.

to the South, such a majority might someday vote to abolish slavery. These developments changed Calhoun from a nationalist to an advocate for states' rights.

In the fall of 1828, Calhoun wrote a report for the South Carolina state legislature on the unfairness of the new tariff law and what the legislators should do about it. In his *South Carolina Exposition and Protest*, Calhoun declared that the 1828 tariff law was "unconstitutional, unequal, and oppressive."

Calhoun agreed that the Constitution granted Congress the power to enact tariffs. But he argued their only purpose could be to raise revenue to run the federal government and pay its debts. He pointed to Article I, Section 8, of the Constitution:

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States . . .

The purpose of the new tariff, he argued, was to protect industries, not to raise revenue. Congress, he continued, had no power in the Constitution to erect protective tariffs that made purchases of many goods in

the South more expensive. “We are the serfs of the system,” he declared.

Calhoun insisted that the federal government (including the Supreme Court) should not decide disputes over what constitutional powers it possessed. Instead, he asserted that each state held the 10th Amendment power to nullify an unconstitutional federal law. Calhoun stated that this nullification power prevented the U.S. government from invading states’ rights.

Finally, Calhoun explained that the ultimate judgment on a federal law nullified by a state would rest with a convention of all the states. The convention would consider a constitutional amendment, requiring a three-fourths vote of the states. This would resolve the matter one way or the other. A nullifying state that refused to accept an amendment adopted by three-fourths of the states would have no choice but to secede from the federal union.

Calhoun’s “Carolina Doctrine” provided nullification as a states’ rights defense against what he called “the oppression of the majority.” Before long, many called him the “Philosopher of Nullification.”

‘Godlike Daniel’

Daniel Webster was born the same year as Calhoun. Webster’s father was a New Hampshire farmer, state legislator, and judge.

Webster graduated from Dartmouth College where he excelled at public speaking. He studied law and became a wealthy Massachusetts lawyer who represented Boston businesses in court and argued cases before the U.S. Supreme Court. He married a minister’s daughter, and after she died, he married a second time.

Like Calhoun, Webster entered politics and had ambitions to become president. He was elected to the House of Representatives in 1812 as a nationalist who supported policies encouraging commerce.

Webster reversed his nationalist course, however, when he opposed

the War of 1812 because it interrupted New England’s trade with Britain. He voted against war taxes and a military draft bill. He argued that states had a duty to stand between their citizens and the “arbitrary power” of the federal government.

After the war, Webster voted against protective tariffs that harmed New England’s shipping industry. But by the 1820s, New England was booming with factories and producing manufactured goods.

In November 1832, South Carolina held a state convention and voted to nullify the tariffs of 1828 and 1832.

Webster therefore changed course again and became a firm advocate for protective tariffs. After his election as a U.S. senator from Massachusetts, he voted for the tariff of 1828 that so distressed Calhoun. (At this time, U.S. senators were elected by state legislatures.)

In January 1830, Webster found himself in a historic Senate debate over Calhoun’s Carolina Doctrine of nullification. The Senate galleries, even the stairways, were crowded with onlookers. Webster’s debate opponent was not Calhoun, but Senator Robert Y. Hayne of South Carolina. Vice President Calhoun, as president of the Senate, chaired the debate.

Hayne followed Calhoun’s arguments that the states could check the power of the federal government by nullification. By some accounts, Calhoun sent notes to Hayne during the debate to help him.

Many already called Webster “Godlike Daniel” because his power-

ful voice had a hypnotic effect on his listeners. Webster countered Hayne by arguing that “the people’s Constitution” and the laws passed by its government, not the states, were the supreme law of the land. He stated that under the Constitution, the U.S. Supreme Court had the “last appeal” in disputes between the federal government and the states.

Webster also asserted that the federal union was “founded on the principle of one nation.” He denied that the U.S. was a league of independent states that possessed the right to secede from the union.

Webster said if a state nullified a federal law, it would have to back this up with military force. “To resist by force the execution of a law,” he warned, “is treason.”

Webster concluded by listing the blessings of the federal union. He prayed that he would never see the union “rent with civil feuds, or drenched, it may be, in fraternal blood!” He denounced those who cried “Liberty first and Union afterwards.” He exclaimed, “Liberty and Union, now and forever, one and inseparable!”

At a banquet a few months later, President Andrew Jackson made this toast: “Our Federal Union: It must be preserved.” Vice President Calhoun also made a toast: “The Union: [After] our Liberty the most dear.”

The Nullification Crisis

In 1832, Congress passed another protective tariff. An angry Calhoun proclaimed, “The question is no longer one of free trade, but of liberty and despotism.” Talk of secession spread across the South.

Calhoun defined the federal union as a “compact of states,” each holding sovereignty (supreme political power). He believed that if a federal law threatened the interests of a state, that state could challenge it — not by going to federal court, but by asking other states to rule on it. The law would be upheld only if a three-fourths majority of the states agreed. Under this system of ►

“concurrent majorities,” a minority of states could block majority rule in Congress. Calhoun saw this as necessary to preserve the federal union.

In November 1832, South Carolina held a state convention and voted to nullify the tariffs of 1828 and 1832. The delegates also called for a convention of all states to decide the constitutionality of protective tariffs. The South Carolinians threatened to secede from the United States if the federal government used the military to enforce the tariff laws.

At first, President Jackson responded by proposing reduced tariff rates. But after the other Southern states rejected South Carolina’s action as too extreme, Jackson issued a proclamation, attacking nullification and secession.

Jackson declared that the Constitution was not a compact of states, and no state had the right to secede because it would destroy a nation of “one people.” He warned, “Disunion by armed force is treason.”

Calhoun resigned as vice president. The South Carolina state legislature elected Senator Hayne as governor and replaced him in the U.S. Senate with Calhoun.

In February 1833, Jackson asked Congress for authority to use the military if necessary to enforce the tariff laws in South Carolina. Calhoun and Webster went head-to-head in a Senate debate on Jackson’s “Force Bill.”

Calhoun called this “Bloody Bill” an unconstitutional declaration of war against a sovereign state. He proclaimed that the Constitution “was made by the states,” which “still retain their sovereignty.”

Webster replied that the supreme law of the land was the Constitution made by “one people” not the states. Therefore, he argued, state nullification and secession were constitutionally impossible. Furthermore, he said that nullification violated the first principle of a republic: “The majority must rule.”

Meanwhile, Henry Clay worked



Daniel Webster (1782–1852) stands on the Senate floor to debate the Compromise of 1850.

up a compromise bill that gradually abolished protective tariffs over a 10-year period. Both Clay’s compromise tariff and the Force Bill were enacted into law.

Calhoun traveled to South Carolina to persuade the state convention delegates to accept the compromise tariff and repeal their acts of nullification. They did this, but also nullified the Force Act even though it was no longer relevant.

The Compromise of 1850

By 1835, the abolitionist movement in the North had gained strength. On the Senate floor, Calhoun defended slavery in the South as “a good — a great good.” He said it was necessary for the economic survival of the South. He attacked the abolitionists for undermining the federal union. “Abolition and the Union cannot coexist,” he declared.

A new constitutional crisis loomed in 1846 when the U.S. went to war with Mexico, which both Calhoun and Webster opposed. Anti-slavery forces pushed for a law that would ban slavery in any lands acquired from Mexico.

Calhoun feared that if new free states were carved out of territories

in the West, the Southern states would become a permanent minority. Sooner or later the anti-slavery majority would abolish slavery.

Calhoun added a new element to his concurrent majorities idea. He wanted the U.S. to elect a president from the North and another from the South, each with veto power over acts of Congress.

Things came to a head following the end of the Mexican War when California applied for admission to the United States as a free state. Also at stake was the slave status of future states formed from the Utah and New Mexico territories.

In 1850, Henry Clay again stepped in with a compromise. Clay argued there was no need to ban slavery in the Western territories. Slavery had already been abolished under Mexican rule, he said, and the climate was not suitable for plantation agriculture. Thus, any new states would be free of slavery. To soothe Southerners, Clay proposed that Congress strengthen enforcement of the federal law that required states to return fugitive (escaped) slaves to their owners.

In March 1850, Calhoun and Webster debated for the last time. Although Calhoun was present, he was too ill to speak, so he had another senator deliver his words.

Calhoun rejected Clay’s compromise and presented a list of Southern demands to restore the balance between North and South. He wanted to open the West to slavery, enforce the fugitive slave law, and pass a constitutional amendment along the lines of his concurrent majorities system.

Three days later, “Godlike Daniel” replied to Calhoun and spoke for Clay’s compromise. “I wish to speak today,” he began, “not as a Massachusetts man, nor as a Northern man, but as an American . . . I speak for the preservation of the Union.” Webster blamed both the North and South for endangering the federal union.

Webster said “Slavery is an

evil,” but he shocked many when he supported Clay’s compromise provision for a stronger fugitive slave law. Webster reminded his fellow Northerners that they had a duty under the Constitution to return runaway slaves. (Art. 4, Sec. 2)

Most, even in the South, praised Webster’s plea for compromise to save the federal union. But abolitionists attacked him for putting the preservation of the union above the suffering of the slaves.

Calhoun died on March 31. In his last letter, he wrote that it was “difficult to see how two peoples so different and hostile can exist together in one common Union.”

Clay’s compromise became law and was hailed as the final settlement of the slave question. The new harsh fugitive slave law, however, kept the slavery question burning.

In a final twist, the South de-

pended on the federal government to enforce the return of escaped slaves while the North appealed to states’ rights to avoid doing this. Only the bloody Civil War settled the slave question and the clashing visions of the federal union held by Calhoun and Webster.

For Discussion and Writing

1. How did Calhoun and Webster view the federal union differently? Which vision do you agree with more? Why?
2. Compare Calhoun’s proposal for concurrent majorities with Webster’s defense of majority rule. Which do you think was better for the United States at the time? Why?
3. Why did Webster decide to support a stronger federal fugitive slave law? Do you agree with his decision? Why?

Suggested Answers to Canon Law Activity

How the Canonists Resolved the Dilemmas

- A. The Poor Parents Dilemma.** The man should try to fulfill both obligations by keeping his vow to enter the monastery and then do good works to help his parents. If this cannot be done, the lesser evil is to keep his vow.
- B. The Madman’s Sword Dilemma.** The safe keeper should hold on to the sword until the madman regains his sanity, or perhaps hand it over to a relative. In this case, the owner of the sword being in his right mind is a righteous requirement for fulfilling the oath.
- C. The Usurer’s Money Dilemma.** The lesser evil is to return the money. There is no telling whether the usurer will use this money to continue sinning or will see the error of his ways.
- D. The Latrine of the Devil Dilemma.** The lesser evil is for the priest to offer the Eucharist to the sinner to avoid violating the secrecy of her confession and publicly exposing her. Christ gave the Eucharist to Judas at the Last Supper.
- E. The Hiding Fugitive Dilemma.** The third party should give no answer at all. There is no sin if the one demanding where his enemy is hiding assumes something from silence. Gratian usually did not offer a resolution to the moral dilemmas he discussed. But in this one he commented that betrayal was a mortal, or grave sin, while lying was a venial or lesser sin.

ACTIVITY

National Powers vs. States’ Rights

Daniel Webster emphasized the national powers of the federal government, John C. Calhoun defended states’ rights, and Henry Clay worked for compromise. While the issues they struggled with have long been settled, disputes over national powers versus states’ rights continue today.

One current controversy concerns school curriculum and testing. In the U.S., what is taught and how it is tested is a matter for each of the 50 states to decide. Most other nations in the world, however, have one national curriculum and testing program for all public schools. Which approach is better?

1. Form small groups. In each group, one or two students will take the role of a nationalist, a states’ righter, and a compromiser.
2. The nationalists and states’ righters should prepare arguments to debate their approaches to school curriculum and testing before the compromisers.
3. The compromisers should try to work something out to satisfy both sides.
4. Each group should then report the main debate points and what the compromisers proposed.

About Constitutional Rights Foundation

Constitutional Rights Foundation is a non-profit, non-partisan educational organization committed to helping our nation’s young people to become active citizens and to understand the rule of law, the legal process, and their constitutional heritage. Established in 1962, CRF is guided by a dedicated board of directors drawn from the worlds of law, business, government, education, and the media. CRF’s program areas include the California State Mock Trial, youth internship programs, youth leadership and civic participation programs, youth conferences, teacher professional development, and publications and curriculum materials.

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Standards Addressed

Canon Law

National High School Civics Standard 3: Understands the sources, purposes, and functions of law, and the importance of the rule of law for the protection of individual rights and the common good. (1) Knows alternative ideas about the sources of law (e.g., custom, Supreme Being, sovereigns, legislatures) and different varieties of law (e.g., divine law, natural law, common law, statute law, international law).

California History Social Science Standard 7.6: Students analyze the geographic, political, economic, religious, and social structures of the civilizations of Medieval Europe. (4) Demonstrate an understanding of the conflict and cooperation between the Papacy and European monarchs (8) Understand the importance of the Catholic Church as a political, intellectual, and aesthetic institution

California History Social Science Standard 10.1: Students relate the moral and ethical principles in ancient Greek and Roman philosophy, in Judaism, and in Christianity to the development of Western political thought. (1) Analyze the similarities and differences in Judeo-Christian and Greco-Roman views of law, reason and faith, and duties of the individual.

Cromwell

National High School World History Standard 27: Understands how European society experienced political, economic, and cultural transformations in an age of global intercommunication between 1450 and 1750. (9) Understands the complaints, goals, and issues of the Cavaliers and Roundheads in the English Civil War.

California History Social Science Standard 7.9: Students analyze the historical developments of the Reformation. (2) Describe the theological, political, and economic ideas of the major figures during the Reformation (3) Explain Protestants' new practices of church self-government and the influence of those practices on the development of democratic practices and ideas of federalism.

Calhoun and Webster

National High School U.S. History Standard 11: Understands the extension, restriction, and reorganization of political democracy after 1800. (2) Understands the positions of northern antislavery advocates and southern proslavery spokesmen on a variety of issues (e.g., . . . states' rights).

National High School Civics Standard 15: Understands how the United States Constitution grants and distributes powers and responsibilities to national and state government and how it seeks to prevent the abuse of power. (4) Understands both the historical and contemporary roles of national and state governments of the federal system and the importance of the Tenth Amendment.

California History Social Science Standard 8.10: Students analyze the multiple causes, key events, and complex consequences of the Civil War. (1) Compare the conflicting interpretations of state and federal authority as emphasized in the speeches and writings of statesmen such as Daniel Webster and John C. Calhoun. (3) Identify the constitutional issues posed by the doctrine of nullification and secession and the earliest origins of that doctrine.

California History Social Science Standard 12.1: Students explain the fundamental principles and moral values of American democracy as expressed in the U.S. Constitution and other essential documents of American democracy. (5) Describe . . . the importance of an independent judiciary . . . , enumerated powers, . . . federalism

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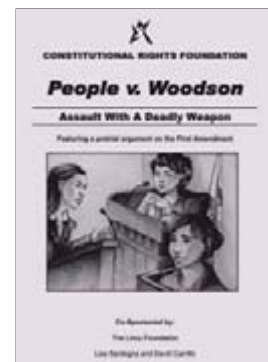
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