

A Dynamic Duo:

A Chambermaid and the Federal Government

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Lesson Description: In this lesson students will construct a detailed timeline to analyze actions of our federal government from 1905-1937 and to uncover understandings about the benefits and dangers of its dynamic processes. The focus is on government approaches to regulating business. The centerpiece of the lesson is a moot court involving the *West Coast Hotel v Parrish* case of 1936.

Grade: 9-12

Lesson Content: (excerpted from the Social Studies Clarification document at <http://www.doe.k12.de.us/ProfDev/Civics.pdf>)

The key concept of this lesson is *dynamic process*. The students should understand that any human enterprise is subject to constant change and revision. No government is so perfectly structured that it cannot be improved and better adapted to changing circumstances. The United States government has remained effective over the centuries largely as a result of legislation, amendments, and interpretations that enable it to adapt to changing times.

Times of national crisis when traditional ways of doing things had to be changed and basic understandings reinterpreted teach the need for change, but students should also understand that the processes of legislating, implementing, and adjudicating law are *inherently* dynamic. Were this not true, we would have stopped making, revising, and interpreting laws a long time ago.

The separation of powers and checks and balances of the U.S. Constitution essentially constitute the structure that constrains the dynamic process of governance. They channel the political process to productive ends. Traditions, precedents, and interpretations further constrain the forces of change to render them more incremental and less disruptive.

Concepts Addressed: dynamic (as it relates to the functions of government); continuity and change over time.

Benchmark[s] Addressed:

- **Civics 2 [Politics]:** Students will understand that the functioning of the government is a dynamic process which combines the formal balances of power incorporated in the Constitution with traditions, precedents, and interpretations which have evolved over the past 200 years.

- **History 1 [Chronology]:** Students will analyze historical materials to trace the development of an idea or trend across space or over a prolonged period of time in order to explain patterns of historical continuity and change.

Essential Questions Addressed:

- Why might any government need to be dynamic?
- Why might dynamic governments sometimes be viewed as dangerous?
- How might the *structure* of the United States government minimize the dangers that may accompany change?
- How might judicial interpretations regarding government regulation of the economy have changed or remained the same from 1900-1940?

Assessments: see Handout 4 on page 17.

Student vocabulary: conservative, liberal, dynamic, stare decisis, precedent, laissez-faire, liberty of contract.

Time Required: approximately 2-3 class periods.

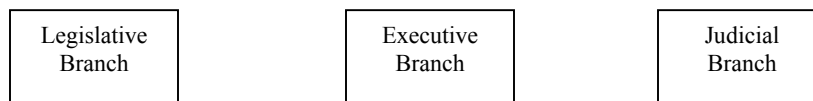
Materials:

- Transparency of Activity I – concept formation.
- Handout 1: Chronology cards - 1 set for every 3–4 students (p. 9-12).
- Class set of Handout 2 – *Essential Questions for Chronology* (p. 13).
- Class set of Handout 3 – *West Coast Hotel v Parrish Case Summary* (p. 14).
- One set of 1936 Supreme Court Role Cards (cut out) – pages 15-16.
- One set of Justice Tent Cards for Moot Court Activity – see pages 18-20.
- Class set of Handout 4 – *Constructed Response Assessment* (p. 17).

Procedures:

Warm-Up: Ask students to take out a blank piece of paper and draw a graphic organizer that illustrates the *structure* of the United States government (see below). Students studied the separation of powers in grades 4-5 and the federal system in grades 6-8. This activity is designed to activate their prior knowledge or schema. Have them label the different parts of the structure.

Sample Organizer: Structure of United States Government



Ask the students: “why is the government structured this way?” (*there are a number of reasons but you want them to get at the idea of allowing one branch to check the other*).

Tell them that today, you are going to be looking at the structure of government as a means to promote and constrain change.

1. Concept Formation – Activity I (p. 7). Tell students that they are about to engage in an activity in which their task is to use clues to guess and define a particular concept. Tell them that you will present them with a series of 7 statements – one at a time. After reading each statement, they are to guess what the concept might be. Statements preceded by a + sign (positive exemplars) offer hints as to what the concept is. Statements preceded by a - sign (negative exemplars) suggest what the concept is not. The blank spaces on top of the question “What is the Concept?” shows how many letters are in the concept word. Do not indicate whether the students have guessed correctly or incorrectly until you have progressed through all 7 exemplars. You may want to offer one or two letters found in the concept word (*dynamic*) as tips. If the students do not guess the word *dynamic*, write it in the blank spaces or on the board and ask students to use the positive exemplars to come up with a definition. Then, present them with the actual definition found at the bottom of the transparency. Check for comprehension. Ask for examples of things that are *dynamic*.

Once the students have a clear understanding of “*dynamic*,” tell them Civics Standard 2 anticipates that they will be able to explain the “dynamic” functioning of American government and that they are going to engage in a series of activities designed to uncover those dynamic operations.

2. Chronological Arrangement – Activity 2. Cut out the Chronology Cards found on Handout 1 - *Thinking Chronologically Cards* (pp. 9-12). Place students in small groups of 3-4 and ask one student in each group (rotating between members) to select one card at a time and explain in their own words what is written on the card to the rest of the group. Then, each group should discuss the following questions as they relate to each card:

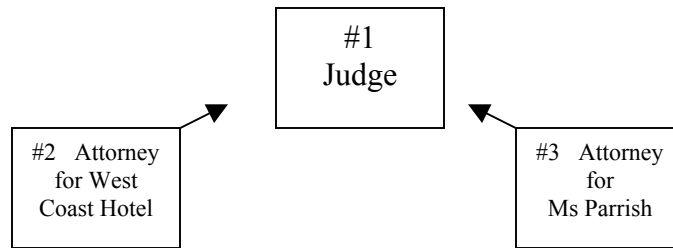
- Was change allowed or constrained? Explain.
- Which branch or state allowed or constrained change?

Instruct the students to place each card in chronological order on their desks or tables until all of the cards form a timeline of government activity.

3. Distribute copies of Handout 2 – *Essential Questions for Chronology* (p. 13) – to the class. The questions on this handout relate to the information on their desktop timelines. Ask the students to “think-pair-share” answers in their groups. Solicit responses and examples from the whole class after the groups complete their assignment. Check the plausibility of responses.
4. Probe for “Big Ideas.” Ask students to identify 1-2 “Big Ideas” that emerge from the timeline. Suggest the following if the students do not.
 - Big Idea #1: The United States government is dynamic.
 - Big Idea #2: The US Supreme Court viewed government interference in
5. Tell the students that they are now going to analyze a landmark Supreme Court case dealing with questions about the government’s right to regulate matters between employers and employees. Distribute copies of Handout 3 - *West Coast*

Hotel v Parrish Case Summary (p. 14). Ask students to read the case, summarize the case facts, and paraphrase the central constitutional question in the case. Ask volunteers to share summaries and the central question in the case. Lead students toward a common, accurate understanding of the facts and question.

6. **Pro-Se Court:** This activity prepares students for the moot court (Step 6). Place students in triads i.e. groups of 3. Ask them to count off “1, 2, 3” so that each student has assigned himself or herself a number from 1-3. Tell the students that the “#1” students are to play the role of the judge. The “#2” students are to play the role of an attorney arguing for West Coast Hotel. The “#3” students are to play the role of attorneys arguing for Ms. Parrish. Have students in each group face each other (see diagram below) and ask the attorneys to present their arguments to the judge. Each attorney should be given 3-5 minutes after which the judge should render a decision. Judges may ask the presenting attorney questions after his or her presentation. Do not debrief. Simply move to Procedure 6.

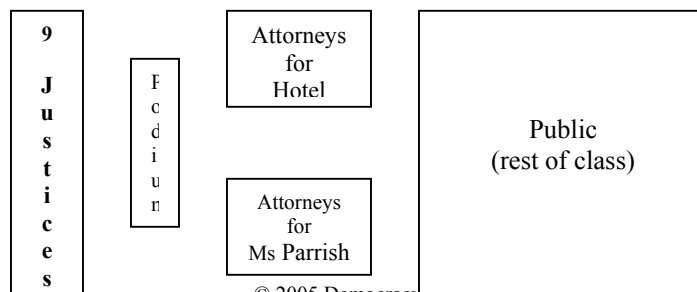


7. **Moot Court:** Tell students that they are now going to engage in a moot court hearing of the 1936 *West Coast Hotel v Parrish* Supreme Court case. This activity illustrates how the Supreme Court actually functions (unlike Step 5) and includes a new dimension in that the students who played justices will be asked to think like the justices who actually heard the case in 1936.

Ask, or assign, two students who played #2 roles to argue the case for West Coast Hotel and two students who played #3 roles to serve as the legal team that will argue the case for Elsie Parrish. Ask nine students who played #1 roles to play the role of the Justices and distribute one role card to each student. Ask the “Justices” to read about their roles (see role cards) and to play those roles as faithfully as possible.

8. Arrange the room to simulate the U.S. Supreme Court (see below) and conduct the moot court. Review the steps at http://www.udel.edu/dssep/teaching_strategies/mootcourt.htm

Give the justices time to deliberate and announce their “holding” and opinions after the hearings.



Debrief:

Phase I: Offer the following information to students as a follow-up to the lesson...

- The Supreme Court surprise – in a 5-4 decision the Court overturned Adkins decision, held in favor of Parrish, upheld the Washington state minimum wage law, and signaled an end to the era of limiting the powers of government to regulate the economy and business.
- “A switch in time saved nine.” Justice Owen Roberts, who ruled with the majority in the Morehead case, provide the critical 5th “swing vote” in the Parrish decision. In doing so, some suggested that he may have preserved the 9 member size of the Court as FDR dropped his court packing plan after much criticism and after the Court began holding that other New Deal measures were constitutional (e.g. Social Security Act). Historians and students of the court still debate whether Roberts switched his vote in response to President Roosevelt’s pressure (e.g. the “court packing plan”). The Court handed down its Parrish decision on March 29, 1937 - less than two months after Roosevelt announced his “court packing” plan.

Phase II - revisit the following essential questions to reinforce and monitor understanding:

- Why might any government need to be dynamic?
- Why might dynamic governments sometimes be viewed as dangerous?
- How might the *structure* of the United States government minimize the dangers that may accompany change?
- *How* might judicial interpretations regarding government regulation of the economy have changed or remained the same from 1900-1940?
- *Why* might judicial interpretations regarding government regulation of the economy have changed or remained the same from 1900-1940?

Extensions/Homework - Practicing Transfer in Preparation for Assessment

Step 1: Explain transfer explicitly.

Explain to students that transfer is one of the important aims of education. Transfer refers to the ability to use what one learns in one lesson and apply it or solve problems in a new but similar situation. In “near transfer” tasks, a problem one is asked to solve is very similar (or “near”) to what one has already learned.

Step 2: Model and Offer Examples of Transfer

Offer an example of near transfer. For example, a student who learns to drive a car uses that understanding to drive a truck. Ask students if they can think of other “near transfers.”

In “far transfer” tasks, the problem or application is far less similar and requires one to do some conscious mind-stretching.

Offer an example of “far transfer.” For example, using chess strategies to design a game plan for soccer. Ask students if they can think of other examples of far transfer.

Step 3: Practice Transfer through Analogies

Tell students that one way to practice transfer is to create analogies. Put the following incomplete analogies on the board. Ask students to complete the analogies in small groups:

Analogy 1

*The Lochner precedent constrained future minimum wage decisions
just like
_____ constrains _____.*

Analogy 2

*President Roosevelt's court packing plan encouraged one Justice to change his vote
just like
_____ encourages _____ to change.*

Analogy 3

*FDR's landslide victory in 1936 opened the way to his court packing plan
just like
_____ opens the way to _____.*

Analogy 4

*The Supreme Court checks the actions of state legislatures
just like
_____ checks the actions of _____.*

Administer the Assessment: See page 17.

Bibliography

Hall, Kermit, ed. (2005). *The Oxford Companion to the United States Supreme Court*. Oxford University Press. New York.

Leuchtenburg, William E. (1995). *The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt*. Oxford University Press. New York.

OYEZ: U.S. Supreme Court Multimedia at www.oyez.org

Activity 1

Concept Formation Activity

_____ _____ _____ _____
What is the concept?

- (+) Lisa changes her hairstyle every four weeks.**
- (-) Mark drives the same route to school every day.**
- (+) Julia experiments frequently with different kinds of food.**
- (-) Jerome only reads nonfiction books.**
- (+) Eric changes jobs every 3 years.**
- (-) Nel makes her children go to bed at 9 every night.**
- (+) Ryan trades in his car for a new one every other year.**

The concept is _____ .

Given the (+) statements that appear above, what might be a good definition for “dynamic.”

Dictionary Definition: characterized by continuous and productive activity or change

Teacher's Resource: Government Regulation Timeline

1905	<u>US Supreme Court Hands Down <i>Lochner v New York Decision</i></u> – in a 5-4 decision the Court struck down New York's Bakeshop Act which restricted the number of hours [10 per day or 60 per week] bakers could work on the basis that it violated the due process rights of employers and employees to freedom of contract (to bargain over the number of hours worked).
1908	<u>US Supreme Court Hands Down <i>Muller v. Oregon Decision</i></u> – in a 9-0 decision the Court upheld a state statute limiting the number of hours [10] women could work under the theory that states had a greater interest in regulating employment of women because of their central role as child bearers meant that women's health was essential to the well-being of future generations.
1913	<u>State of Washington Passes Legislation</u> It is "unlawful to employ women or minors...under conditions of labor detrimental to their health or morals, and...to employ women workers in any industry...at wages which are not adequate for their maintenance."
1923	<u>US Supreme Court Hands Down <i>Adkins v. Children's Hospital Decision</i></u> – in a 5-3 decision the Court declared that a minimum wage act for women was unconstitutional because it violated the liberty of contract (for wages in return for work) that is guaranteed by the Constitution.
1933	Franklin Delano Roosevelt becomes President in the midst of the Great Depression. New Deal begins.
1933	Congress passes the National Industrial Recovery Act under which the National Recovery Administration (NRA) is established. The NRA establishes codes that regulate weekly employment hours, wages, and minimum wages of employees.
1933	Congress passes the Agricultural Adjustment Act under which the government pays farmers for not producing. Funds come from a tax on food processors.
1935	<u>US Supreme Court Hands Down <i>Schechter Poultry Corp. v United States Decision</i></u> - in a 9-0 decision the justices ruled that Congress unconstitutionally granted legislative powers to the executive branch when it authorized the National Recovery Administration to establish codes regulate weekly employment hours, wages, and minimum ages of employees.
1936	<u>US Supreme Court Hands Down <i>Butler v United States Decision</i></u> - in a 6-3 decision the Court strikes down the Agricultural Adjustment Act concluding that the government had no right to regulate agriculture, either by limiting production or taxing food processors.
1936	<u>US Supreme Court Hands Down <i>Morehead v New York ex rel. Tipaldo Decision</i></u> – in a 5-4 decision the Court struck down New York's minimum wage for women and children on the grounds that the right to contract in return for work "is part of the liberty protected by the due process clause [of the 14 th Amendment]."
1936	November – President Roosevelt wins the biggest margin of victory in the history of the electoral college.
1936	December – Supreme Court hears arguments in <i>West Coast Hotel. Co. v Parrish</i>
1937	President Roosevelt introduces a plan to "vitalize" the judicial branch. He proposes to add one justice to the Supreme Court (up to 6) for each justice age 70 who has served at least 10 years and has not retired.

Handout 1:
Thinking Chronologically Cards

<p>1905</p> <p><u>US Supreme Court Hands Down <i>Lochner v New York Decision</i></u> – in a 5-4 decision the Court struck down New York’s Bakeshop Act which restricted the number of hours [10 per day or 60 per week] bakers could work on the basis that it violated the due process rights of employers and employees to freedom of contract (to bargain over the number of hours worked).</p>	<p>1908</p> <p><u>US Supreme Court Hands Down <i>Muller v. Oregon Decision</i></u> – in a 9-0 decision the Court upheld a state statute limiting the number of hours [10] women could work under the theory that states had a greater interest in regulating employment of women because of their central role as child bearers meant that women’s health was essential to the well-being of future generations.</p>
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<p style="text-align: center;">1936</p> <p>November - President Roosevelt wins the biggest margin of victory in the history of the electoral college.</p>	<p style="text-align: center;">1936</p> <p>December - Supreme Court hears arguments in <i>West Coast Hotel. Co. v Parrish</i></p>

<p style="text-align: center;">1937</p> <p>President Roosevelt introduces a plan to “vitalize” the judicial branch. Proposes to add one justice to the Supreme Court (up to 6) for each justice over age 70 who has served at least 10 years and has not retired.</p>	<p style="text-align: center;">1935</p> <p>May - FDR holds a press conference following the Schechter decision. FDR suggests that the Court is old and stuck in “horse and buggy” times. Conservatives on the Court come to be known as the “four horsemen.”</p>
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Handout 2

Essential Questions for Chronology

1. How would you describe the Supreme Court's constitutional thinking in terms of cases involving government regulation of business? Support your answer with evidence.

2. What are some trends (change or continuity) over time suggested by the timeline?
 - a. patterns of continuity

 - b. patterns of change

3. Which branch or branches of government appear to be pushing for change? Support your answer with evidence.

4. Which branch or branches of government appear to be constraining change? Support your answer with evidence.

5. How might the functioning of government in the United States be viewed as a dynamic process?

6. Use two or more events presented on the timeline as evidence of the dynamic functioning of the United States government. Explain how those events illustrate the government's dynamic nature.

7. Why might any government need to be dynamic?

8. Why might a dynamic government be viewed as dangerous? Offer an example to illustrate your point.

9. How might the *structure* of the United States government minimize the dangers that may accompany change? Explain your answer.

10. Do Supreme Court precedents make government more or less dynamic? Support your answer with evidence.

Handout 3

West Coast Hotel Co. v. Parrish

December 16-17, 1936

Case Summary

Late in the summer of 1933, Elsie Lee, a woman of about forty who would soon marry and be Elsie Parrish, had taken a job as a chambermaid at the Cascadian Hotel in Wenatchee, Washington. Parrish worked irregularly over the next year and a half cleaning toilets and sweeping rugs for an hourly wage of twenty-two cents, later raised to a quarter. When she was discharged in May 1935, she asked for back pay of \$216.19, the difference between what she had received and what she would have gotten had she been paid each week the \$14.50 minimum mandated for her occupation under the laws of the state of Washington. The Cascadian, which was owned by the West Coast Hotel Company, offered to settle for \$17, but she would not hear of it. Instead, she and her husband Ernest sued for what she insisted was due her.

Parrish brought a suit to recover the difference between the wages paid to her and the minimum wage fixed by state law.





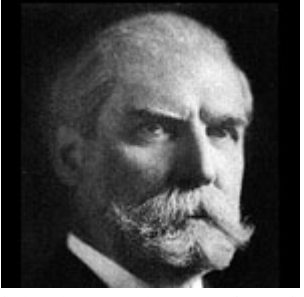

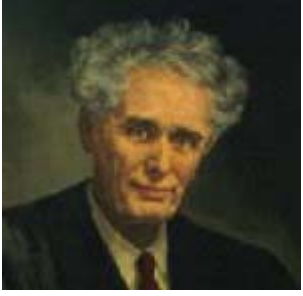
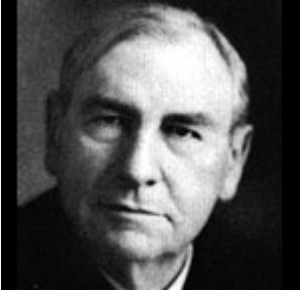

In 1905, the Supreme Court recognized “liberty of contract,” meaning that individuals were free to negotiate the conditions under which they worked without government interference.

The question in Parrish is: did Washington’s minimum wage law violate the liberty of contract as it had been read into the Fifth Amendment and applied by the Fourteenth Amendment in 1905?

Sources

Leuchtenburg, William E. (1995). *The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt*. Oxford University Press. New York.

OYEZ: U.S. Supreme Court Multimedia at <http://www.oyez.org/oyez/resource/case/439/> (West Coast Hotel v Parrish) and <http://www.oyez.org/oyez/resource/case/211/> (Lochner v New York).

 <p>Pierce Butler Age: (70) Years on Court: 13</p>	 <p>James McReynolds Age: (74) Years on Court: 22</p>	 <p>George Sutherland Age: (74) Years on Court: 14</p>
 <p>Willis Van Devanter Age: (77) Years on Court: 25</p>	 <p>Chief Justice Charles Evans Hughes Age: (74) Years on Court: 26</p>	 <p>Owen Roberts Age: (61) Years on Court: 6</p>
 <p>Louis Brandeis Age: (80) Years on Court: 20</p>	 <p>Harlan Fiske Stone Age: (64) Years on Court: 11</p>	 <p>Benjamin Cardozo Age: (66) Years on Court: 4</p>

<p><u>George Sutherland</u> You are one of the conservative “four horsemen” who tends to support long held ideas of <i>laissez-faire</i> (minimize government regulation of the economy and business); <i>liberty of contract</i> (government should not interfere with the right of an employer and employee to negotiate working agreements); and <i>stare decisis</i> (reluctance to change earlier decisions of the Court).</p>	<p><u>James McReynolds</u> You are one of the conservative “four horsemen” who tends to support long held ideas of <i>laissez-faire</i> (minimize government regulation of the economy and business); <i>liberty of contract</i> (government should not interfere with the right of an employer and employee to negotiate working agreements); and <i>stare decisis</i> (reluctance to change earlier decisions of the Court).</p>	<p><u>Pierce Butler</u> You are one of the conservative “four horsemen” who tends to support long held ideas of <i>laissez-faire</i> (minimize government regulation of the economy and business); <i>liberty of contract</i> (government should not interfere with the right of an employer and employee to negotiate working agreements); and <i>stare decisis</i> (reluctance to change earlier decisions of the Court).</p>
<p><u>Owen Roberts</u> You are one of the “swing voters” on the Court who votes with the conservatives on some issues and with the liberals on other issues. Mostly, however, you vote with the conservatives who believe in <i>laissez-faire</i>, <i>liberty of contract</i>, and <i>stare decisis</i>. Your mind is not closed to some government regulation, however.</p>	<p><u>C.J. Charles Evans Hughes</u> You are one of the “swing voters” on the Court who votes with the conservatives on some issues and with the liberals on other issues. Mostly, however, you vote with the liberals who believe that the Constitution does allow for some government regulation of the economy.</p>	<p><u>Willis Van Devanter</u> You are one of the conservative “four horsemen” who tends to support long held ideas of <i>laissez-faire</i> (minimize government regulation of the economy and business); <i>liberty of contract</i> (government should not interfere with the right of an employer and employee to negotiate working agreements); and <i>stare decisis</i> (reluctance to change earlier decisions of the Court).</p>
<p><u>Benjamin Cardozo</u> You have been positioned as a liberal on the Court. Liberals tend to allow for greater government regulation over the economy, believe that our liberty was never intended to be completely unrestricted, and are more likely to embrace change.</p>	<p><u>Harlan Fiske Stone</u> You have been positioned as a liberal on the Court. Liberals tend to allow for greater government regulation over the economy, believe that our liberty was never intended to be completely unrestricted, and are more likely to embrace change.</p>	<p><u>Louis Brandeis</u> You have been positioned as a liberal on the Court. Liberals tend to allow for greater government regulation over the economy, believe that our liberty was never intended to be completely unrestricted, and are more likely to embrace change.</p>

Handout 4 Assessments

Selected Response

Which of the following shows how the United States government functions in a dynamic way?

- a. The guarantee of two votes per state in the Senate.
- b. The requirement that candidates for President be native-born.
- c. The role that political parties play in the American political system.
- d. The manner in which members of the House of Representatives are elected.

Correct Response: C

Brief Constructed Response

The New York Times

December 16, 2005

News Flash!

President authorizes warrantless eavesdropping on overseas telephone calls and e-mails of U.S. citizens with suspected ties to terrorists.

How might the President’s actions be constrained and why might it be important to do so?

Response

Rubric

2 = this response gives a valid response with an accurate and relevant explanation.

1 = this response gives a valid response with an inaccurate, irrelevant, or no relevant explanation.

0 = inaccurate or no response.

Justice Pierce Butler

Justice James McReynolds

Justice

George Sutherland

Justice

Willis Van Devanter

- Chief Justice

Charles Evans Hughes

Justice

Owen Roberts

Justice
Harlan Fiske Stone

Justice
Louis Brandeis

Justice

Benjamin Cardozo