**Separation of Powers**

**Study Questions**

**The Big Picture**

What is the purpose/goal of separating powers among the different branches (institutions) of government?

**President, Congress, and the Military**

In what way are the top military generals denied final decision authority over military decisions?

Can the commander in chief (the president) set the rules for the military, such as the procedural rules for military tribunals?

Can Congress ever issue commands to the top military generals regarding the use of troops in battle?

Why do presidents, of both political parties, object to the 3rd provision in the War Powers Act (1973)?

Were Republicans in the U.S. Senate successful in shaping Donald Trump’s foreign policy toward Saudi Arabia after the Saudis brutally murdered Jamal Khashoggi (2018), who was working as a reporter for the Washington Post newspaper?

Has President Biden taken a harder stand against Saudi Arabia in the wake of the murder of Jamal Khashoggi (2018)? In other words, have the opposition voices (to Saudi Arabia) in Congress had any success in shaping U.S. foreign policy toward Saudi Arabia? (not in lecture—do a google search for answers)

Was Congress successful in shaping President Biden’s foreign policy toward Ukraine in the early months after Russia invaded Ukraine? If so, how so?

**Most Constitutionally Powerful Institution**

Which institution of government (executive, legislative, judicial) has the most constitutional checks on power on the other two?

What powers has Congress abdicated (given up) to the executive branch in the last 90 years or so?

Who is the central focus of our political system today?

Which institution is the final arbitrator of disputes in our society?

**Separation of Powers and the Legislative Process**

What is the president’s role in the legislative process? Congress’ role? The US Supreme Court’s role?

**The Bureaucracy**

Give two examples of organizations in the federal bureaucracy?

What or who exerts influence over portions of the federal bureaucracy that is not officially part of the federal government?

**Court-Packing Plan**

What was FDR’s dispute with the US Supreme Court about?

What was FDR’s dispute with the US Senate (Congress) about? Why was this particular dispute a case of institutional conflict (rather than partisan or ideological conflict)?

Why did FDR ask Congress for action when his principle dispute was with the US Supreme Court?

In the 2020 presidential primaries, some Democratic candidates for president, e.g., Pete Buttigieg, advocated for expanding the number of members on the U.S. Supreme Court. Why? What would be the purpose of expanding the membership on the U.S. Supreme Court today?

**Impeachment of Andrew Johnson**

In what way would the Command of Army Act (1867) be a violation of separation of powers?

What was the larger policy goal over which President Johnson and Congress were fighting? Who won in this struggle over power?

**The League of Nations**

What was the larger policy goal over which President Wilson and the Senate were fighting? Who won in this struggle over policy?

**Detaining Terror Suspects in the Post-9/11 Era**

Given the decisions of the Supreme Court, does a terror suspect have a right to appeal to a judge for his release? Does a terror suspect have a right to legal counsel?

Was the dispute between Bush and the US Supreme Court partisan, ideological, institutional or a combination of two or more?

**Continued Operation of the Guantanamo Bay Detention Facility**

How did Congress block the Obama administration’s desire to close the Guantanamo Bay detention facility?

Was the dispute between President Obama and Congress over whether or not to close Guantanamo Bay: Partisan? Ideological? Institutional?

**Implied Check on the US Supreme Court**

As exhibited in 1937 and in 2012, what role does the Court define for itself when evaluating legislation that is part of a tide of history, such as the implementing the New Deal in the 1930s and staying on path toward universal health care in 2012?

Why does the Court fear opposing the elected branches of government when they appear to have the tide of history on their side?

**The Bottom Line**

When separation of powers works as it was designed, is the conflict between or among institutions partisan, ideological, or institutional?

Would our founding fathers be pleased about how well their separation-of-powers design works? In other words, does the design work as it was originally intended?