Speech by Benjamin Franklin Prior to the Final Vote at the Constitutional Convention
September 17, 1787

Applying Content Literacy Strategies in History/Social Studies

Prior to this lesson, students have learned how to use Reciprocal Teaching Strategies, predicting, clarifying, summarizing, questioning, to scaffold their reading conversations and note making.

Understanding the Appeals to Ethos, Logos, and Pathos

Ethos: the source's credibility, the speaker's/author's authority
Logos: the logic used to support a claim (induction and deduction); can also be the facts and statistics used to help support the argument.
Pathos: the emotional or motivational appeals; vivid language, emotional language and numerous sensory details

Note making Rules

1. Create one set of notes for your group. Copies will be made for each group member.
2. Share the writing responsibilities.
3. Remember that if the person taking notes wants to speak, he or she must pass the notes to someone else to record.
4. In the margin, identify the author of a note by their initials.

Group Directions:

1. Before you read Franklin's speech, generate of list of things you remember about:
    a. Benjamin Franklin. Once piece of information I will give you is that Franklin was too weak to deliver the speech himself. He sat in a chair while fellow Pennsylvanian James Wilson gave the speech.
    b. The weaknesses of the Articles of Confederation
    c. The Constitutional Convention
2. Examining the language of Franklin's speech –
    a. Read the speech silently
    b. Divide the reading: lines 1-13, 14-26, and 27 to the end.
    c. After each break:
        i. In your group notes, clarify any words or phrases that anyone in the group had trouble understanding. Remember that you can be tested on the meaning of any words or phrases in the speech.
    d. After reading the entire speech, identify a section of the speech that represents each of the three types of appeals, ethos, logos, and pathos.
        i. In your notes write down the line numbers of that example, ie. Lines 4-6 are pathos (they really aren't)
    e. Clearly explain in your notes how that section represents that particular appeal. Include the key words or phrases from the speech that demonstrate that type of appeal.

Speech by Benjamin Franklin Prior to the Final Vote at the Constitutional Convention

Mr. President

I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them: For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men indeed as well as most sects in Religion, think themselves in possession of all truth, and that wherever others differ from them it is so far error. Steele a Protestant in a Dedication tells the Pope, that the only difference between our Churches in their opinions of the certainty of their doctrines is, the Church of Rome is infallible and the Church of England is never in the wrong. But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain french lady, who in a dispute with her sister, said "I don't know how it happens, Sister but I meet with no body but myself, that's always in the right — *Il n'y a que moi qui a toujours raison*."

In these sentiments, Sir, I agree to this Constitution with all its faults, if they are such; because I think a general Government necessary for us, and there is no form of Government but what may be a blessing to the people if well administered, and believe farther that this is likely to be well administered for a course of years, and can only end in Despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic Government, being incapable of any other. I doubt too whether any other Convention we can obtain, may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel; and that our States are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors, I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. If every one of us in returning to our Constituents were to report the objections he has had to it, and endeavor to gain partizans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects & great advantages resulting naturally in our favor among foreign Nations as well as among ourselves, from our real or apparent unanimity. Much of the strength & efficiency of any Government in procuring and securing happiness to the people, depends, on opinion, on the general opinion of the goodness of the Government, as well as of the wisdom and integrity of its Governors. I hope therefore that for our own sakes as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress & confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts & endeavors to the means of having it well administred.

On the whole, Sir, I can not help expressing a wish that every member of the Convention who may still have objections to it, would with me, on this occasion doubt a little of his own infallibility, and to make manifest our unanimity, put his name to this instrument.

History Repeats Itself in the Classroom, Too!
Moving Beyond the Basics – Using Reciprocal Teaching Strategies to Read Between the Lines of Federalist 78
Written by Alexander Hamilton

Prior to this lesson, students have learned how to use the basic steps of Reciprocal Teaching Strategies, predicting, clarifying, summarizing, questioning, to scaffold their reading conversations and note making.

Federalist 78 is Alexander Hamilton's explanation of the federal judiciary system and the institution of a Supreme Court. Ratification of the new constitution was not guaranteed and one characteristic of the new government that had some people concerned about a central government having too much power was the creation of a Supreme Court, an independent branch of the federal government. For Hamilton, a strong judiciary was essential for an effective system of checks and balances.

At the heart of a strong judiciary, Hamilton believed the Court should have the power of judicial review. The concept of judicial review, the idea that the courts could nullify and declare void a law passed by the legislature, dated back to the early 1600's. However, Hamilton could not make that argument explicitly or he would risk driving off needed votes for ratification. He would have to be subtle, esoteric in stating his beliefs.

Political writing can be risky to one's political future. Sometimes it can even be dangerous. Because of the risks, there is a long tradition of writing in an esoteric manner, meaning that on the surface the work states one thing, but beneath the surface, there is a different message. Arthur Miller's, *The Crucible*, might be considered an example of this type of writing.

Note making Rules

1. Create one set of notes for your group. Copies will be made for each group member.
2. Share the writing responsibilities.
3. Remember that if the person taking notes wants to speak, he or she must pass the notes to someone else to record.
4. In the margin, identify the author of a note by their initials.

Group Directions:
Use lines 23-81 to complete this assignment.

1. Before you read the excerpt of Federalist 78, generate of list of things you remember about:
    a. Alexander Hamilton, the author of Federalist 78.
    b. The weaknesses of the Articles of Confederation that resulted in the writing of a new constitution
    c. The arguments in favor of the new constitution – *the Federalist Papers*
    d. The arguments opposing the new constitution – *the Anti-federalist Papers*
2. Examining the language of Federalist 78 –
    a. Read the speech silently
    b. Divide the reading into these sections: lines 23-31, 32-46, 47-52, 53-57, 58-63, 64-76, and 77-81.
    c. After each section:
        i. In your group notes, clarify any words or phrases that anyone in the group had trouble understanding. Remember that you can be tested on the meaning of any words or phrases in the speech.
        ii. In the group's own words, summarize the argument Hamilton is making about the Court and its powers.
    d. After reading the entire excerpt:
        i. Explain where and how Hamilton turns his description of the Court's power into an argument for judicial review.
        ii. In your notes write down the line numbers where he does this.
        iii. Why does Hamilton believe the Supreme Court needs the power of judicial review?
        iv. Even though it is not mentioned in the Constitution, how does the power of judicial review affect the system of checks and balances?

The Federalist No. 78 (excerpt: lines 1-81)
The Judiciary Department
[Alexander Hamilton]

To the People of the State of New York:

WE PROCEED now to an examination of the judiciary department of the proposed government.

In unfolding the defects of the existing Confederation, the utility and necessity of a federal judicature have been clearly pointed out. It is the less necessary to recapitulate the considerations there urged, as the propriety of the institution in the abstract is not disputed; the only questions which have been raised being relative to the manner of constituting it, and to its extent. To these points, therefore, our observations shall be confined.

The manner of constituting it seems to embrace these several objects: 1st. The mode of appointing the judges. 2d. The tenure by which they are to hold their places. 3d. The partition of the judiciary authority between different courts, and their relations to each other.

First. As to the mode of appointing the judges; this is the same with that of appointing the officers of the Union in general, and has been so fully discussed in the two last numbers, that nothing can be said here which would not be useless repetition.

Second. As to the tenure by which the judges are to hold their places; this chiefly concerns their duration in office; the provisions for their support; the precautions for their responsibility.

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices *during good behavior*; which is conformable to the most approved of the State constitutions and among the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan, is no light symptom of the rage for objection, which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power[1]; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive. For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers."[2] And it proves, in

the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their *will* to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not **fundamental**.