Understanding the Principle

Limited government, a basic principle at work in the framing of the Constitution, gave rise to another major principle in designing government—the separation of powers. The Framers reasoned that if the powers granted to government were divided among different branches, no one branch could gain enough power to oppress the people.

The Constitution divides the power to govern among three branches of government. First is the legislative branch, led by Congress and responsible mainly for making laws. Second is the executive branch, led by the President and responsible mainly for carrying out the laws. And third is the judicial branch, led by the Supreme Court and responsible for interpreting the laws—what they do and do not mean and whether they are in keeping with the intent of the Constitution—and applying them in the courts.

The Constitution at Work

In practice, separation of powers does not mean that Congress alone makes laws or that the President alone exercises executive powers or that the judicial branch alone has judicial powers. For example, to run the executive branch, the President needs departments and agencies, like the Department of Labor or the Federal Communications Commission; Congress sets these up and funds them. Congress also shares judicial power when it sets up federal courts. A President who wants a certain program to be put in place—for example, an educational program like Head Start—proposes it to Congress and asks the legislative branch to enact it into law.

For these reasons, separation of powers is also a sharing of powers. James Madison made a strong case for such sharing when he argued that although the three branches of government must be separate, they must also be “so far con-

nected and blended as to give each a constitutional control over the others, the degree of separation...essential to a free government.”

Separating the Powers

The Supreme Court is continually defining the separation of powers as the branches of government conduct their affairs. In 1881, the Court ruled that the House of Representatives acted outside the realm of its powers when it jailed a man for refusing to testify before a House investigative committee (Kilbourn v. Thompson). The Court thought that Congress was exercising a judicial power rather than a legislative power. The Court has found other congressional actions to be in violation of the separation of powers. For example, in Buckley v. Valeo, 1976, the Court upheld that the appointment power rests solely with the executive branch (with Senate approval), in response to an attempt by Congress to appoint officers for the Federal Elections Commission.

The executive branch has also seen its powers curbed to abide by the separation of powers. For example, although the President may propose legislation, the ultimate lawmaking power resides in Congress. The Supreme Court made this clear as it declared unconstitutional President Harry Truman’s attempt to seize steel mills and have them operate as government property. This action, the Court said, falls under legislative powers the Constitution grants only to Congress (Youngstown Sheet and Tube Company v. Sawyer, 1952).

Questions for Review and Discussion

1. Summarize why and how the Constitution enforces the principle of separation of powers.

2. What is the Supreme Court’s role in ensuring the separation of powers? Do you think this gives it too much, too little, or just enough power over the matter?
The Enduring Constitution: Six Basic Principles of the Constitution

Limited Government

Understanding the Principle
As the writers of the Constitution sat down to their work, they were mindful that many Americans held a deep distrust of government. The Declaration of Independence itself accused the British king of using governmental power to abuse Americans:

He has plundered our seas, ravaged our Coasts, burned our towns, and destroyed the lives of our people.

How could government be designed to avoid this pitfall?

The Constitution's answer to this question is the principle of limited government. The way to discourage government from abusing its citizens is to place limits on it. And a way to limit government is to spell out what powers it can and cannot exercise. The clauses of the Constitution prescribe not the actions of citizens, but the actions of government.

The Constitution at Work
Article I, Section 8 of the Constitution lists the specific powers that Congress is given. The first states that "Congress shall have the power to lay and collect taxes...." It then limits the reasons for which these taxes can be levied. They must be used (1) to pay the nation's debts or (2) to pay for the national defense or (3) to provide for the general welfare of the people. During the Great Depression of the 1930s, Congress levied a tax on processing agricultural goods as a way to pay for a program to regulate agricultural production. But in the case of United States v. Butler, 1936, the Supreme Court ruled that the tax and the program could not be allowed because they went "beyond the powers delegated to the federal government."

Article I, Section 9 outlines powers that Congress is forbidden to exercise. The fourth provision prohibits Congress from laying any tax on "articles exported from any State." In the 1980s, Congress passed the Harbor Maintenance Tax to collect fees from shippers of export goods to pay for the upkeep of harbor facilities. But in United States v. United States Shoe Corp, 1998, the Supreme Court ruled that this tax violated the Section 9 limitation on government.

Interpreting the Limits
The Bill of Rights, which includes the first 10 Amendments to the Constitution, sets many limits on Congress to protect people's personal liberties. For example, the 1st Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." Does that mean that Congress has no power at all over how people practice their religions? Well, not in all cases. In 1972, an Amish man refused to pay Social Security taxes. He said that these taxes were a kind of insurance and that his religion dictated that Amish people were to place their trust in God, not in insurance. In United States v. Lee, 1982, the Supreme Court ruled that Congress had a legitimate power to demand such taxes in order to maintain its rightful functions. The Amish man was ordered to pay.

Questions for Review and Discussion
1. How does the Constitution enforce the principle of limited government? Why did the Framers allow for this enforcement?
2. What two provisions of the Constitution does the case of the Amish man put into conflict? Do you agree with the Court's finding over which takes precedence? Explain your answer.