Foundational Documents and Court Cases Reader

TO ACCOMPANY

American Government: Stories of a Nation for the AP® Course

Karen Waples ■ Pamela Lamb
Katie Piper ■ Benwari Singh

bedford, freeman & worth
high school publishers
Boston | New York

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Composition: Lumina Datamatics, Inc.
Printing and Binding: LSC Communications
Cover photo: Tristan Eaton, photo by Rey Rosa/The L.I.S.A. Project NYC

Library of Congress Control Number: 2018968515

ISBN-13: 978-1-319-23658-8
ISBN-10: 1-319-23658-8

Manufactured in the United States of America.

1 2 3 4 5 6 24 23 22 21 20 19

W. H. Freeman and Company
Bedford, Freeman & Worth
One New York Plaza
Suite 4600
New York, NY 10004-1562
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Check for Understanding

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Printed in Canada

1 2 3 4 5 6 24 23 22 21 20 19

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Foundational Documents

How to Master the Foundational Documents

Reading the foundational documents may seem intimidating. Most of them were written a long time ago, using outdated words. The Articles of Confederation and the Constitution, for example, are written in legalistic language, because they are governing documents that have the force of law.

The key to reading foundational documents is not to panic if you don't understand every word. The following strategies are designed to help you tackle the foundational documents. Not all of these strategies will work for everyone. Try them all, and use what works best for you.

Once you have fine-tuned your approach, reading historical documents will become easier, and you will be able to use these skills in college and beyond.

1. Get comfortable

Before you tackle difficult reading, eliminate distractions. Put your cell phone on silent, and put it in a drawer or in another room. Tell your family to leave you alone, or go to a library or another quiet place. Maybe you like to read outside. Put on comfy clothes, and grab your favorite beverage and a snack. Some students love to read, but even if you don't enjoy reading, you will feel better about it if you can create a setting you enjoy.

2. Before you read the document, get an overview

This document reader contains *Focus on, Overview,* and *Reader Alert!* sections to give you a preview of what you will be reading. In college, where you may be asked to read other historical and difficult documents, you may be able to find plain-English versions online. Be sure these versions come from a credible source. Remember that translations are a tool to help you understand difficult reading, but they *do not* replace reading the full document. This is very important, especially if you want to do well on the AP® Exam, where you will be given passages from nonrequired documents and be asked to interpret them. If you haven't developed the skills of parsing language and understanding arguments, you will struggle on the exam.

3. Highlight key words and passages to drown out the noise

Here is an example of what you might highlight in the passage from *Federalist* No. 10 defining faction: "By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community."

When you review the highlighted text, you get the gist of what a faction is: a group that shares a common interest and that will cause harm to others. This isn't a perfect definition, but it gets the point across.

4. Use context clues

This document reader defines difficult and unusual terms, but you may still come across a term you don't understand. It would be time-consuming to find the definition of every word you don't fully understand, and doing so may be unrealistic. You may be able figure out what a word means by putting it in context. For example, the passage above, from *Federalist* No. 10 contains the phrase, "adversed to the rights of other citizens, or to the permanent and aggregate interests of the community." Madison's use of the word *adversed* seems weird, but the rest of the sentence indicates that it means *against*. Think of other ways you have seen similar terms used. Enemies are sometimes described as *adversaries*, so the term *adversed* has a negative connotation.

5. Don't just read—interact!

Reading is more than just moving your eyes over a page. The author's message has to sink into your consciousness. The document reader contains questions to help you understand each section. Pay attention to these questions, because they are designed to help you understand why each section is important and how the document is structured. When you are in college, you may have to add notes in the margin to help you interact with and remember each passage. When you take notes in the margin and highlight important passages, you don't have to re-read the document later for review. You can just refer to your notes and highlighting, and you have a built-in study guide.

6. Ask for help

Sometimes, despite all of your hard work, you just don't get it. Teachers aren't mind-readers, and your teacher may not know you are struggling in reading the documents. AP® students are often hesitant to admit when they don't understand something. AP® classes are filled with smart kids, but at some point, most students feel like they are the only person in the room who doesn't understand. Make an appointment with your teacher, make a list of the points in the document that you want to clarify, and get help. You may have a group of friends who are good at explaining things. Talking over the content clears up most misconceptions.

Experiment with these strategies to figure out what works best for you. And keep a positive attitude. Think of reading as your personal interaction with the author over time and space. This is one of the coolest aspects of reading.

Federalist No. 10

The Same Subject Continued: The Union as a Safeguard against Domestic Faction and Insurrection

James Madison

The Federalist Papers were a series of essays written by Alexander Hamilton, John Jay, and James Madison. These essays were written as a response to essays that were opposed to the new Constitution published in New York newspapers during the ratification debate in the fall of 1787. In all, Hamilton, Jay, and Madison published 85 essays under the pseudonym Publius that explored the benefits of the new Constitution and advocated that New Yorkers should support ratification.

Focus on *Federalist* No. 10

Federalist No. 10, written by James Madison and published November 23, 1787, is generally considered to be the most important of the *Federalist* essays. In *Federalist* No. 10, Madison explains how the Constitution would "control and break the violence of faction." This essay has been used to explain how the Constitution balances various groups that might harm the community, preventing any one of them from becoming too powerful and taking away the liberty of others.

Overview of *Federalist* No. 10

In the essay, Madison

- defines a faction.
- describes why factions are inevitable in a democracy.
- describes the causes of faction.
- explains why it is impossible to prevent the causes of faction.
- explains how the Constitution creates a republic that can control the effects of the "mischiefs of faction."
- explains why factions are easier to control in a large republic.

Reader Alert!

Although Madison writes in outdated language, his argument is linear and logical. Madison first discusses the causes of faction before addressing how the Constitution controls the effects of faction. If you pay close attention to the simple way the argument is organized, it will be easier for you to understand the arguments Madison lays out in the document.

[On the necessity of a new constitution]

To the People of the State of New York:

AMONG the numerous advantages promised by a well- 1
constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most *specious* declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually *obviated* the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments;

Why does Madison argue for a new form of government?

specious—a false statement that seems to be true

obviate—to anticipate and prevent

but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations.

Note this concession to the Antifederalists.

[On the definition of faction]

2 By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, *adversed* to the rights of other citizens, or to the permanent and aggregate interests of the community.

How does Madison define faction so that all factions are groups, but not all groups are factions?

adversed—opposed to

[On the difficulty in removing the causes of faction]

3 There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

How does this short paragraph preview the structure of Madison's argument?

4 There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

What are the methods for eliminating the causes of faction?

5 It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an *aliment* without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

Why is it impossible to eliminate either cause?

aliment—nourishment

6 The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an *insuperable* obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and

How does Madison describe human nature?

insuperable—impossible to overcome

How does the unequal distribution of wealth and property cause factions to form?

unequal *faculties* of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

faculties—powers

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to *vex* and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government. 7

How does this paragraph relate to separation of powers and checks and balances?

vex—to bother or annoy

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a 8

Why are legislators tempted to make laws that will benefit themselves? Why will the most powerful faction, or the majority, probably win?

law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the *inferior number*, is a shilling saved to their own pockets.

inferior number—the minority whose rights will be trampled

[On the temptations of leaders]

9 It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

How does Madison address the potential for bad leaders and the temptation for people to act in their immediate interest?

[From causes of faction to controlling their effects]

How does this short paragraph serve as a transition in Madison's argument?

10 The inference to which we are brought is, that the CAUSES of faction cannot be removed, and that relief is only to be sought in the means of controlling its EFFECTS.

[On republican government as a control on factions]

11 If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority

is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great *desideratum* by which this form of government can be rescued from the *opprobrium* under which it has so long labored, and be recommended to the esteem and adoption of mankind.

Why is a faction of the majority more dangerous than a smaller faction?

desideratum—requirement

opprobrium—harsh criticism

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to *concert* and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful. 12

concert—band together

What are the two ways of controlling a faction of the majority?

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. *Theoretic politicians*, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions. 13

How does direct democracy harm the rights of the minority?

theoretic politicians—leaders who are more interested in theory than practical solutions

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine 14

How does Madison define a republic?

the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

[On the difference between a republic and direct democracy]

15 The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

What are the two differences between a direct democracy and a republic?

[On the advantages of republican government]

16 The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more *consonant* to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first *obtain the suffrages*, and then betray the interests, of the people. The question resulting is, whether small or extensive republics are more favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations:

How does representative government guard against the passions of citizens?

consonant—in agreement with

obtain the suffrages—get people's votes

17 In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the *cabals* of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

cabal—a secret political group

How does Madison use comparison and contrast?

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters. 18

Why are large republics more likely to have representatives who are fit to serve?

[Argument for a large republic]

It must be confessed that in this, as in most other cases, there is a *mean*, on both sides of which inconveniences will be found to lie. By enlarging too much the number of *electors*, you render the representatives too little acquainted with all their local circumstances and lesser interests; as by reducing it too you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures. 19

mean—an average; in this case, a legislature that is the right size

electors—citizens who elect representatives

How does federalism lead to legislatures that are the right size to get things done?

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary. 20

How does a large republic, with numerous factions, prevent a faction from taking control of government?

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, 21

How is Madison's argument in favor of a large country similar to his argument in favor of a large republic?

endowments—attributes

palpable—tangible

is enjoyed by a large over a small republic,—is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite *endowments*. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most *palpable* advantage.

22 The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

How does Madison refute an argument made in Brutus No. 1?

[Conclusion]

What is Madison's conclusion about the proper structure of government?

incident—resulting from

23 In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most *incident* to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.

Impact of *Federalist* No. 10

Federalist No. 10 is generally seen as the defining statement of the Framers' dislike of interest groups, because many political scientists view Madison's definition of faction as synonymous with interest groups. Remember that the Federalists and Antifederalists were not political parties, which had not formed yet in the United States. Today, political parties and interest groups are generally viewed as factions in modern American politics.

In the AP® U.S. Government and Politics course description, *Federalist* No. 10 is placed in Unit 1, Foundations of American Democracy. *Federalist* No. 10 argued that the Constitution, specifically the creation of a large republic and federalism, help protect the liberty of American citizens. *Federalist* No. 10 was used as an argument in favor of the ratification of the Constitution in the debate between the Federalists and the Antifederalists.

Specifically, the curriculum requires you to use *Federalist* No. 10, alongside the Constitution and Brutus No. 1, to describe the competing views on how to structure the American political system. On one side were those who believed in participatory democracy (Brutus No. 1) and on the other side were those who believed in pluralist democracy (*Federalist* No. 10).

The Constitution, *Federalist* No. 10, and Brutus No. 1 are covered in Chapter 2. Federalism is covered in Chapter 3. *Federalist* No. 10 helps explain interest group and party competition in modern American politics. Political parties are covered in Chapter 14, and interest groups are covered in Chapter 15.

Check for Understanding

1. Define faction in your own words (paragraph 2).
2. Describe the two methods of curing the mischiefs of faction (paragraph 4).
3. Describe the two remedies for controlling the effects of faction (paragraphs 17 and 20).
4. Explain why factions are more easily controlled in republics than in direct democracies (paragraphs 17–19).
5. Explain why factions are more easily controlled in large republics (paragraphs 20–22).

Critical Thinking Question

Madison argued that the Constitution would prevent dangerous factions from gaining too much power and taking away the liberty of citizens. However, the United States has changed significantly due to the availability of mass media, the nature of political parties, and the role of money in politics. To what extent are Madison's predictions about republican government still valid today?

Gideon v. Wainwright

Focus on *Gideon v. Wainwright* (1963)

Before the 1960s, and *Gideon v. Wainwright,* 372 U.S. 335 (1963), it was common for individuals accused of crimes to be tried without a lawyer if they could not afford one. This is because states were not required to provide legal counsel at taxpayers' expense, except in cases involving the death penalty. While the Sixth Amendment of the U.S. Constitution guarantees the right of an attorney, this guarantee had been interpreted to apply to only federal cases or state cases with special circumstances. In *Betts v. Brady* (1942), the Court held that in state criminal trials, a defendant is ordinarily not entitled to have an attorney provided at the state's expense, although defendants must be granted an attorney in special circumstances, such as illiteracy or incompetence.

Facts of the Case

Clarence Earl Gideon was tried in a Florida court without an attorney for petty theft. Gideon could not afford an attorney. He requested that an attorney be appointed, but his request was denied. Florida state law at the time provided defendants with lawyers only in cases involving capital punishment. The charge against Gideon was petty larceny, so his crime did not qualify. Gideon did not have any special circumstances, as outlined in *Betts v. Brady,* that would have required that an attorney be appointed on his behalf.

Gideon participated in his own defense at trial. He did a poor job defending himself and was found guilty of larceny as well as breaking and entering. While in prison, Gideon read law books and prepared a petition for habeas corpus (arguing that he had been imprisoned illegally due to being tried without a lawyer) with the state of Florida. His habeas corpus appeal was denied. He then hand-wrote a petition for a writ of certiorari asking the Supreme Court to hear his case, and certiorari was granted.

Gideon's attorneys argued that the Sixth Amendment's right to an attorney should be incorporated into state law because of the due process clause of the Fourteenth Amendment. The due process clause of the Fourteenth Amendment has been used to incorporate parts of the Bill of Rights and make them applicable to the states in certain cases.

Issue

Does the Sixth Amendment's right to counsel extend to defendants in state courts without special circumstances?

Holding/Decision

The Court decided unanimously in favor of Gideon, arguing that the right of a defendant in a criminal trial to have the assistance of counsel is a right essential to a fair trial. The petitioner's trial and conviction without counsel violated the Sixth and Fourteenth Amendments.

Reader Alert!

The decision in this case did not make Gideon innocent of the larceny charges. It made the trail without a lawyer invalid. As a result, Gideon had to be retried with a lawyer for the same offense. In this separate trial that occurred after the Supreme Court decision in *Gideon v. Wainwright,* Gideon was tried with a lawyer and found innocent of the charges.

Excerpt from Majority Opinion

1 MR. JUSTICE BLACK delivered the opinion of the Court.

[On Gideon's legal troubles]

2 Petitioner was charged in a Florida state court with having broken and entered a poolroom with intent to commit a misdemeanor. This offense is a felony under Florida law. Appearing in court without funds and without a lawyer, petitioner asked the court to appoint counsel for him, whereupon the following colloquy took place:

3 The COURT: Mr. Gideon, I am sorry, but I cannot appoint Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint Counsel to defend you in this case.

4 The DEFENDANT: The United States Supreme Court says I am entitled to be represented by Counsel.

[How the case reached the Supreme Court]

5 Put to trial before a jury, Gideon conducted his defense about as well as could be expected from a layman. He made an opening

statement to the jury, cross-examined the State's witnesses, presented witnesses in his own defense, declined to testify himself, and made a short argument "emphasizing his innocence to the charge contained in the Information filed in this case." The jury returned a verdict of guilty, and petitioner was sentenced to serve five years in the state prison. Later, petitioner filed in the Florida Supreme Court this habeas corpus petition attacking his conviction and sentence on the ground that the trial court's refusal to appoint counsel for him denied him rights "guaranteed by the Constitution and the Bill of Rights by the United States Government." Treating the petition for habeas corpus as properly before it, the State Supreme Court, "upon consideration thereof" but without an opinion, denied all relief. Since 1942, when *Betts v. Brady*… was decided by a divided Court, the problem of a defendant's federal constitutional right to counsel in a state court has been a continuing source of controversy and litigation in both state and federal courts. To give this problem another review here, we granted certiorari. … Since Gideon was proceeding *in forma pauperis,* we appointed counsel to represent him and requested both sides to discuss in their briefs and oral arguments the following: "Should this Court's holding in *Betts v. Brady,*…, be reconsidered?"

Why was certiorari granted in Gideon's case?

in forma pauperis—legal term for someone who can proceed to trial but is too poor to pay legal fees

[On the history of the right to counsel and the action of the Fourteenth Amendment]

The Sixth Amendment provides, "In all criminal prosecutions, the accused shall enjoy the right… to have the Assistance of Counsel for his defence." We have construed this to mean that in federal courts counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived. Betts argued that this right is extended to *indigent* defendants in state courts by the Fourteenth Amendment. In response, the Court stated that, while the Sixth Amendment laid down 6

indigent—poor (and unable to pay legal fees)

> no rule for the conduct of the States, the question recurs whether the constraint laid by the Amendment upon the national courts expresses a rule so fundamental and essential to a fair trial, and so, to due process of law, that it is made obligatory upon the States by the Fourteenth Amendment 7

8 On the basis of this historical data the Court concluded that "appointment of counsel is not a fundamental right, essential to a fair trial."

9 We accept *Betts v. Brady's* assumption, based as it was on our prior cases, that a provision of the Bill of Rights which is "fundamental and essential to a fair trial" is made obligatory upon the States by the Fourteenth Amendment. We think the Court in *Betts* was wrong, however, in concluding that the Sixth Amendment's guarantee of counsel is not one of these fundamental rights.

What part of the *Betts* decision does the Court agree with? How does this decision disagree with *Betts*?

10 Several years later, in 1936, the Court reemphasized what it had said about the fundamental nature of the right to counsel in this language:

11 We concluded that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution.

11 … And again, in 1938, this Court said:

12 [The assistance of counsel] is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty.… The Sixth Amendment stands as a constant admonition that, if the constitutional safeguards it provides be lost, justice will not "still be done."

[On the ideal of fair trials for all]

13 Not only these precedents, but also reason and reflection, require us to recognize that, in our *adversary system* of criminal justice, any person *haled* into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may

adversary system—using two opposing attorneys to argue the sides of a case

hale—to force to attend, drag in

not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

Excerpt from Concurring Opinions

MR. JUSTICE CLARK, concurring in the result. 14

That the Sixth Amendment requires appointment of counsel in "all criminal prosecutions" is clear both from the language of the Amendment and from this Court's interpretation.... It is equally clear from the... cases, all decided after *Betts v. Brady,*..., that the Fourteenth Amendment requires such appointment in all prosecutions for capital crimes. The Court's decision today, then, does no more than erase a distinction which has no basis in logic and an increasingly eroded basis in authority. In *Kinsella v. United States ex rel. Singleton,*... we specifically rejected any constitutional distinction between capital and noncapital offenses as regards congressional power to provide for *court-martial* trials of civilian dependents of armed forces personnel.... Indeed, our opinion there foreshadowed the decision today, as we noted that: 15

court martial—a military court

> Obviously Fourteenth Amendment cases dealing with state action have no application here, but if they did, we believe that to deprive civilian dependents of the safeguards of a jury trial here... would be as invalid under those cases as it would be in cases of a capital nature. 16

MR. JUSTICE HARLAN, concurring. 17

I agree that *Betts v. Brady* should be overruled, but consider it entitled to a more respectful burial than has been accorded, at least on the part of those of us who were not on the Court when that case was decided. 18

How does Justice Harlan then "bury" the *Betts* case in the following paragraphs?

[On extending the right to counsel]

The declaration that the right to appointed counsel in state prosecutions, as established in *Powell v. Alabama,* was not limited to 19

capital cases was, in truth, not a departure from, but an extension of, existing *precedent*.

precedent—earlier related legal decisions

20 The principles declared in *Powell* and in *Betts,* however, have had a troubled journey throughout the years that have followed first the one case and then the other. Even by the time of the *Betts* decision, *dictum* in at least one of the Court's opinions had indicated that there was an absolute right to the services of counsel in the trial of state capital cases. Such dicta continued to appear in subsequent decisions, and any lingering doubts were finally eliminated by the holding of *Hamilton v. Alabama* …

dictum (plural, ***dicta***)—an authoritative but not binding statement in a legal decision

[The fate of the "special circumstances" rule]

Does Justice Harlan consider the precedent of the *Betts* case to be still in effect? How has the definition of "special circumstances" changed?

21 In noncapital cases, the "special circumstances" rule has continued to exist in form while its substance has been substantially and steadily eroded. In the first decade after *Betts,* there were cases in which the Court found special circumstances to be lacking, but usually by a sharply divided vote. However, no such decision has been cited to us, and I have found none, after *Quicksall v. Michigan,* … decided in 1950. … The Court has come to recognize, in other words, that the mere existence of a serious criminal charge constituted, in itself, special circumstances requiring the services of counsel at trial. In truth, the *Betts v. Brady* rule is no longer a reality.

22 This evolution, however, appears not to have been fully recognized by many state courts, in this instance charged with the front-line responsibility for the enforcement of constitutional rights. To continue a rule which is honored by this Court only with lip service is not a healthy thing, and, in the long run, will do disservice to the federal system.

How does Justice Harlan interpret the evolution of the "special circumstances" rule?

23 The special circumstances rule has been formally abandoned in capital cases, and the time has now come when it should be similarly abandoned in noncapital cases, at least as to offenses which, as the one involved here, carry the possibility of a substantial prison sentence. (Whether the rule should extend to all criminal cases need not now be decided.) This indeed does no more than to make explicit something that has long since been foreshadowed in our decisions.

Impact of *Gideon v. Wainwright* on the U.S. legal system

This case is important in the AP US® Government and Politics curriculum framework for several reasons. It is an example of the struggle between Liberty and Order (one of the Big Ideas in the course). While the *Gideon* case is well known for assisting the poor in defending themselves in a court of law, it also made it more difficult for the state to prosecute and convict criminals. The idea that Gideon (and others in similar circumstances) deserve a fair trial must be balanced against the need of the state to maintain order. It also provides an example of how protections of the Bill of Rights have been selectively incorporated by the Fourteenth Amendment's due process clause to prevent state infringement of basic liberties.

The case had an enormous impact on how defendants are tried for felonies at the state level, requiring that attorneys for defendants be appointed at taxpayer expense. At the time, the decision was unpopular with some who felt that individuals should have to pay for their own defense and not rely on the state funding. But today, it is a well-established practice in our legal system that individuals are entitled to counsel, and if they cannot afford counsel, one will be appointed at the expense of the state.

Check for Understanding

1. Describe the charges against Gideon, and identify the first court in which he was tried. (Paragraph 2.)
2. Describe the holding in *Betts v. Brady*. (Paragraphs 5 through 9.)
3. Explain why Gideon claimed he had a right to counsel. Explain why the state of Florida denied Gideon counsel. (Paragraphs 2, 3, and 4.)
4. Describe the holding of the Supreme Court in *Gideon v. Wainwright*.
5. Explain why the majority opinion held that the Sixth Amendment requires the state to provide counsel for indigent defendants in felony cases.

SCOTUS Practice Question

Police in Cleveland, Ohio, believed that Dollree Mapp was hiding a fugitive. The police entered Mapp's house without a warrant and searched the home. The police did not find the fugitive but found evidence of other illegal behavior. Mapp was charged and convicted at trial, based partly on the evidence seized by the police without a warrant. Mapp appealed her case to the Supreme Court of Ohio on the basis that the police lacked a warrant to search her home, as required by the Fourth Amendment to the U.S. Constitution. A previous case had decided that the Fourteenth Amendment's due process clause incorporated the Fourth Amendment's requirement that police have a warrant to search a home, but did not forbid the admission of evidence obtained by warrantless searches in state courts.

The Court held that evidence illegally obtained in warrantless searches is inadmissible in court proceedings. This is called the exclusionary rule. The Fourth Amendment was made applicable to the states through the Fourteenth Amendment.

A. Identify the constitutional provision that is common to both *Gideon v. Wainwright* (1963) and *Mapp v. Ohio* (1961).

B. Based on the provision identified in part A, explain how the facts of *Mapp v. Ohio* led to a similar holding as the holding in *Gideon v. Wainwright*. Then describe how the facts of the two cases differed.

C. Explain how both cases have an impact on the principle of federalism.