

How Did the Constitution Guard Against Tyranny?

In May of 1787 they began to drift into Philadelphia, 55 individuals all responding to the call for a Constitutional Convention. Most were wealthy, all were white, all were male. They came from eleven of the rather disunited states stretched along the eastern seaboard. New Hampshire delegates would not show up until July. Rhode Island would not show up at all.

The problem facing this remarkable group of men was that the existing **constitution**, the **Articles of Confederation**, just wasn't working. Under the Articles there was no **chief executive**, there was no court system, there was not even a way for the central government to force a state to pay taxes. A new constitution, creating a stronger central government, was necessary if the new nation was to hold together.

The decision to go forward with a new constitution presented a special challenge. Was it possible to **frame** a government that was strong enough to serve the needs of the new nation and yet which did not create any kind of **tyranny**? Just four years earlier, the thirteen states had concluded a long revolutionary war to rid themselves of control by a king. Could they create a government that was tyranny-free?

Tyranny is most often defined as harsh, absolute power in the hands of one individual – like a king or a dictator. Thus the colonists called King George III a tyrant. However, in this Mini-Q we will use a broader definition of tyranny, one provided by James Madison. In his support of the Constitution, Madison wrote as follows:

The accumulation of all powers ... in the same hands, whether of one, a few, or many (is) the very definition of tyranny.

Federalist Paper #47

What Madison was saying is that there are many kinds of tyranny. You can have a tyranny of one supreme ruler who takes all power for

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himself or herself. You can also have a tyranny of a few (when several generals or religious leaders seize control). You can even have tyranny by the many, as when the majority denies rights to a minority.

For Madison and his fellow **delegates**, the challenge was to write a Constitution that was strong enough to hold the states and the people together without letting any one person, or group, or branch, or level of government gain too much control.

Examine the four documents that follow and answer the question: *How did the Constitution guard against tyranny?*

Document A: Federalism

Content Notes:

- James Madison was one of the principal authors of *The Federalist Papers* (the others were Alexander Hamilton and John Jay) which were written and circulated during the ratification process. Political scientists and historians have long regarded them as the most brilliant defense of the Constitution ever written. In all there were 85 essays; this is an excerpt from Number 51.
- Madison's central argument here is that in setting up a compound republic, the framers have created a hedge against tyranny. They created a strong central government and left the state governments in place. For Madison, this is perhaps the leading justification for federalism, that to some extent the central government and the various state governments will check the power of the other.
- The chart lends concreteness to just how Madison's compound republic (federalism) actually distributed power between the central government and the state governments.
- The word "federalism" can cause confusion. Help students understand that the term "federal" can refer to a federal or compound system of government as it does in this document. It can also mean "central" as in the central or national government in Washington.

Teaching Tips:

- Depending on the skill level of the class you might want to start with a pep talk. Madison's writing is not easy and the ideas here are sophisticated. Understanding Madison's words is sometimes like unlocking a puzzle.
- The word "federalism" only appears in the document title. You might begin by giving students the hint that federalism means about the same thing as "compound republic" which Madison describes. You also may want students to figure that out for themselves.
- Discuss the Document Analysis questions:
 1. A "compound" is something made of two or more pieces. What are the two pieces that make up Madison's compound government?

The central or national government and the state governments
 2. What word ending in "ism" is another word for this kind of compound government?

Federalism
 3. How does this compound government provide "double security" to the people?

The central and state governments will check each other's power. Also, the branches within each level of government will provide checks within that level.
 4. Using the chart above, can you see a pattern in the types of power the Constitution reserved for the State governments?

States seem to have power over the more local and personal issues (school, marriage, etc.). These personal liberties were too important for the framers to put into the hands of a national power. Governments closer to the people (the local and state governments) would be more in tune with the feelings and cultures of their area.
 5. How does federalism guard against tyranny?

By distributing certain powers between the central government and the states neither could tyrannize (gain absolute power over) the nation or the nation's people.

Document A

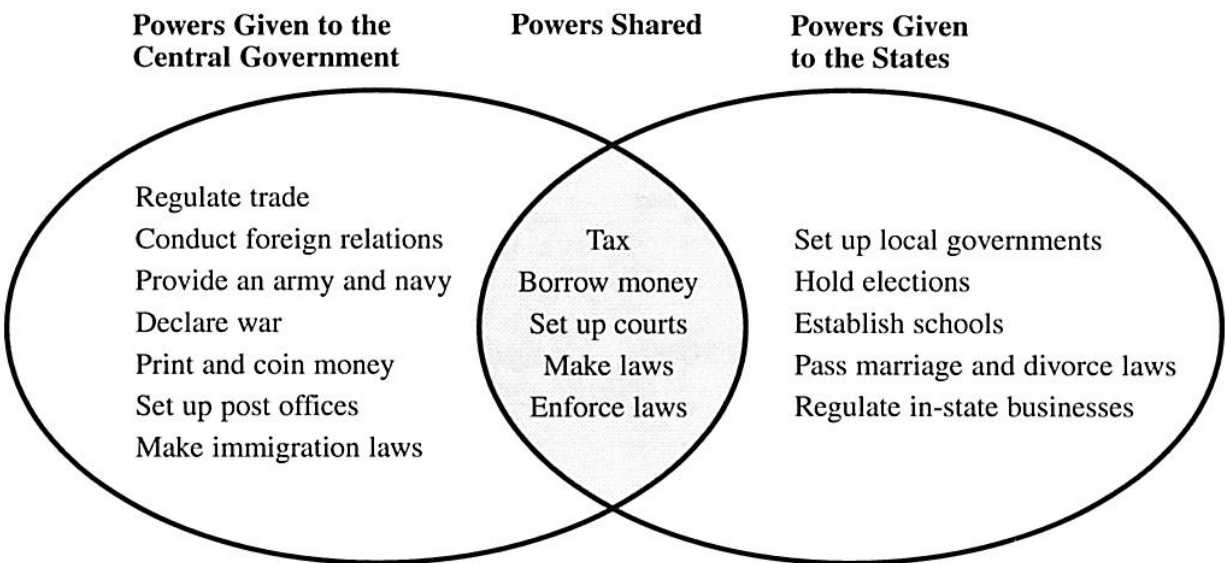
Source: James Madison, *Federalist Paper* #51, 1788.

“In the compound republic of America, the power surrendered by the people is first divided between two distinct governments [state and federal], and the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will each control each other, at the same time that each will be controlled by itself.”

Note: Madison’s idea of division of power between central and state governments is known as Federalism. Specific power divisions can be seen in the chart below.

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Source: From various sources.



Document B: Separation of Powers

Content Notes:

- The first meeting of the Constitutional Convention was May 25, 1787. Early on, with no objection, it was decided to frame a new constitution featuring a separation of powers.
- Establishing a separation of legislative, executive, and judiciary powers implied that a system of checks and balances would be put in place. This is the subject of Document C.
- The key executive powers of the President:
 - appoint and hire workers to enforce and carry out the national laws of the land
 - make treaties; conduct foreign policy
 - appoint executive department heads (cabinet)
 - appoint judges
 - suggest laws
 - suggest budget
- Key legislative powers of Congress (the House and the Senate)
 - make laws
 - declare war
 - approve treaties and Presidential appointments
 - approve budget
- Key judicial powers of the Supreme Court
 - decide meaning of the laws
 - decide on whether a law is constitutional (judicial review)

Teaching Tips:

- Mention that there have been many governments in history where there was no separation of powers. This was true of the pharaohs in Egypt, the emperors in China, the great khans of Mongolia, many kings and queens of Europe, as well as 20th century tyrants such as Adolph Hitler and Joseph Stalin. But there are times even in a democracy when the separation breaks down, as when FDR tried to pack the Supreme Court.
- You might ask students to brainstorm some of the specific powers listed in the content notes. Separating the legislature from the executive from the judiciary meant more than simply putting them in separate buildings, although that was done too.
- Discuss the Document Analysis questions:
 1. What is the main idea of the Madison quote?

If one person or group of persons gets all these powers you will have tyranny.
 2. Does Madison say it is possible to have tyranny in a democracy? Explain.

Yes, he says powers can accumulate even when the government is "elective."
 3. Which of the three branches has the power to make laws? Enforce laws? Determine if laws are broken?

The legislature makes the laws, the executive branch enforces the laws, the judicial branch judges if the laws have been broken.
 4. What would James Madison say about allowing a person elected to the House of Representatives to serve at the same time on the Supreme Court? Explain his thinking.

He would say this is one step toward tyranny. You must separate law-makers from judges or you give too much power to one person.
 5. How does the separation of powers guard against tyranny?

By separating the three powers you keep one person, or one group, from doing whatever it wants.

Document B

Source: James Madison, *Federalist Paper #47*.

“The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may be justly pronounced the very definition of tyranny.... (L)iberty requires that the three great departments of power should be separate and distinct.”

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Source: Constitution of the United States of America, 1787.

Article 1, Section 1

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article 2, Section 1, Clause 1

The executive power shall be vested in a President of the United States. He shall hold his office during the term of four years, and, (serve) together with the Vice-President, chosen for the same term....

Article 3, Section 1

The judicial power of the United States shall be invested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and the inferior courts, shall hold their offices during good behavior....

Document C: Checks and Balances

Content Notes:

- Checks and balances are the necessary sidecar to separation of powers. They enable one branch to step in if another branch begins to overreach.
- Madison argued that “while dependence on the people is, no doubt, the primary control on government,” it is not enough. What was needed was separation of powers and the attendant checks and balances. In this way no government created by the people could turn around and abuse the people.
- While there was no disagreement among the delegates over the notion of separation of powers, there was considerable discussion over the various checks and balances. For example, an early suggestion was that the executive and a “convenient number” of the judiciary ought to review every proposal that came out of the legislative branch. This was not approved. Then it was suggested that the executive, be it one, two, or three individuals, be able to suspend any legislative act for a period of years. This was voted down. Eventually, agreement was reached on an executive “negative” (veto) that was subject to a two-thirds override vote by each house in Congress. In such back-and-forth manner were a number of checks and balances arrived at.

Teaching Tips:

- Review with students the relationship between separation of powers and checks and balances. Students might think of it this way: The framers set up three branches of government and gave each a primary job to do – make laws, enforce laws, judge laws. However, the framers also gave each branch a second job to do and that was to restrain the power of the other branches. Wisely, the framers provided each branch with the tools to do more than simply wag a finger.
- Review some of the checks and balances in Document C.

- Did checks and balances prevent tyranny by one branch over another branch, or by one branch over the sovereignty of the people, or was it both? (It was probably both. For example, the veto override power of Congress prevents the President from crippling the legislative branch. The same override power protects the people from a President who is disregarding the will of the people’s elected law-makers.)

- Discuss the Document Analysis questions:

1. What is the main idea in the Madison quote?
The separation of the legislative, the executive, and the judicial branches should not be complete. Each should have some check on the powers of the other.
2. What is one way the legislature can check the power of the chief executive?
For example, the House can impeach the President.
3. What is one way the President can check the power of the Supreme Court?
The President can appoint members of the Supreme Court.
4. What is one way the Supreme Court can check the Senate?
The Supreme Court can rule a law passed by the Senate unconstitutional.
5. According to this document, how did the framers of the Constitution guard against tyranny?
The framers gave each of the three branches of government several ways they could limit the power of the other two branches. Together these powers are called checks and balances. By limiting power, checks and balances guard against tyranny by keeping one branch from getting more powerful than the others.

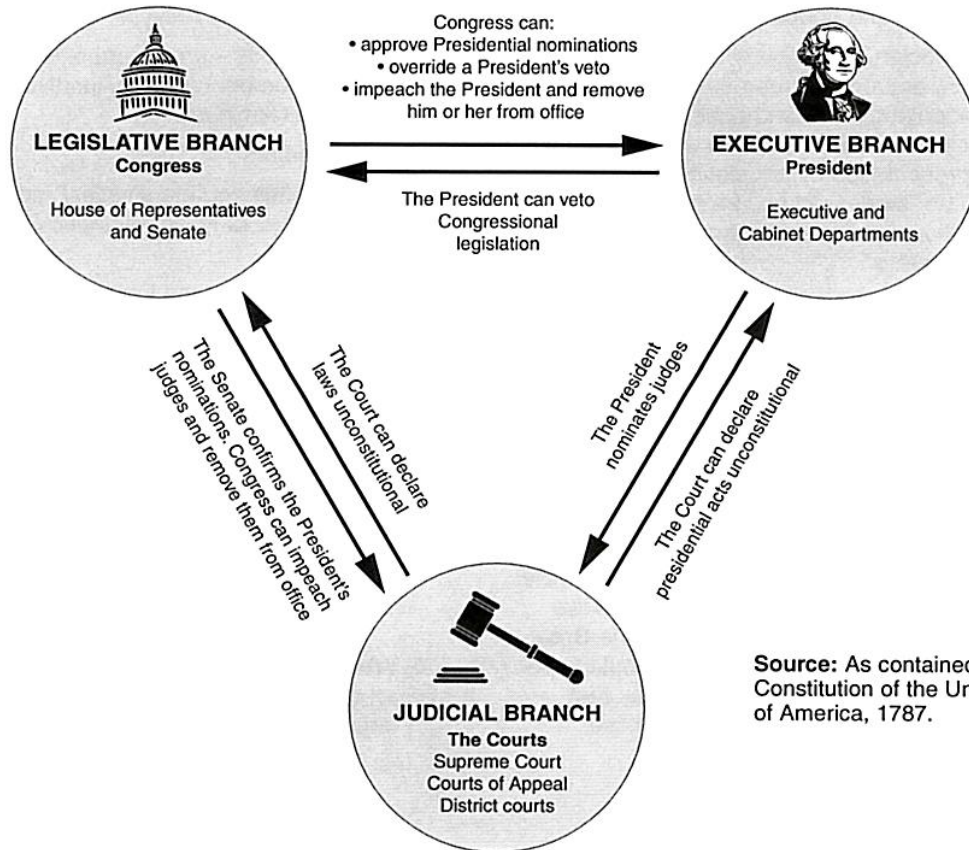
Document C

Source: James Madison, *Federalist Paper* #51, 1788.

“...the constant aim is to divide and arrange the several offices in such a manner as that they may be a check on the other.... [The three branches] should not be so far separated as to have no constitutional control over each other.”

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Source: From various sources including the Constitution of the United States of America.



Source: As contained in the Constitution of the United States of America, 1787.

Document D: Big States and Small States

Content Notes:

- Probably the number one issue facing the Convention delegates was how to settle the matter of large states versus small states. It was such a fearful issue for little Rhode Island that it did not even attend. State size and membership is much less an issue today.
- The small state – large state issue centered on one question: how would the states be represented in the legislative branch? There was general agreement that there should be two houses in Congress. (Franklin wanted one house but stayed quiet.)
- Edmond Randolph, the primary spokesman for the Virginia Plan, argued that representation be apportioned by population in each house. William Patterson countered with the New Jersey Plan saying that representation by population would cause his state to be “swallowed up.” Patterson announced he would rather “submit ... to a despot than to such a fate.”
- James Wilson of Pennsylvania responded that he would never confederate on Patterson’s principles. “If we depart from the principle of representation in proportion to numbers, we will lose the object of our meeting.”
- John Dickenson from little Delaware thought that he had a way out. He moved that the states should have equal votes in one house in the legislature. On this motion, every delegation voted “Nay!” even though it was to become the eventual compromise. It took several weeks, and a few cool heads like Franklin’s, before agreement on the famous Great Compromise was reached. Dickenson would have his Senate. Wilson would have his House. Few were completely happy. Such is compromise.

Teaching Tips:

- It might be a good idea to read Sections 2 and 3 aloud. The main task is for students to see why representation in the House of Representatives favored the more populous states while representation in the Senate favored the less populous states. Students should note that small and large had to do with population and not area.
- Share any of the Content Note info that seems appropriate. In 1787 Americans were beginning to think of themselves as belonging to a nation rather than just a state. The fears and jealousies that divided big and small states were much greater then than today.
- An interesting side note is that Georgia, while its population was comparatively small, still voted with the large states. Ask students why this might have been. (Georgia, with its large area, anticipated that its population would soon grow.)
- Discuss the Document Analysis questions:
 1. On what basis – area, population, or wealth – was the number of representatives in the House determined?

Population
 2. Which states had the smallest representation in the House of Representatives? How many?

Rhode Island and Delaware each had one.
 3. Which state had the most representatives? How many?

Virginia (ten)
 4. Who would have been happier with their representation in the House, small states or large states? Why?

The large states because their bigger population entitled them to more representatives and therefore more power
 5. Who would have been happier with their representation in the Senate, small states or large states? Why?

The small states because they had the same number of senators as the big states
 6. How did this small state – large state compromise guard against tyranny?

Equal representation in the Senate protected the small states from domination by the large states. Unequal representation in the House rightfully protected the more populous states from being neutralized by a minority.

Document D

Source: Constitution of the United States of America, 1787.

Article 1, Section 2, House of Representatives

Clause 3: Representatives ... shall be apportioned ... according to ... [population]... The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until [a census is taken within three years] the state of New Hampshire shall be entitled to three, Massachusetts eight, Rhode Island ... one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Article 1, Section 3, Senate

Clause 1: The Senate of the United States shall be composed of two senators from each state, chosen by the legislatures thereof for six years; and each senator shall have one vote.

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