John Witherspoon (1723–1794)

I willingly embrace the opportunity of declaring my opinion without any hesitation, that the cause in which America is now in arms, is the cause of justice, of liberty, and of human nature.

—John Witherspoon, 1776

He was a father figure to America’s Founding Fathers. A renowned theologian from Scotland, John Witherspoon educated many young men who became prominent leaders of the Founding generation. He went on to embrace the revolutionary cause. He signed the Declaration of Independence, participated in the Continental Congress, and served in positions of influence in New Jersey state government. Yet Witherspoon’s greatest legacy remains that of educator. Dozens of his students went on to leadership positions in the emerging United States. He had challenged them in their youth to read widely and think deeply about theology, economics, natural science, and political philosophy. By so doing, Witherspoon provided intellectual training in the battle for individual liberty.

Background
John Witherspoon was born in Gifford, Scotland, in 1723. His father served as the Presbyterian minister for the parish, and Witherspoon eventually followed in his footsteps. He received a Master of Arts degree from the University of Edinburgh and attended divinity school. At age twenty, he took a position at a parish in Beith, Scotland. For the next twenty years, he worked diligently and wrote widely admired theological works. Witherspoon developed a positive reputation and a persuasive speaking style. Six feet tall, with bushy eyebrows, a prominent nose, and large ears, he was a formidable presence in his Scottish parish. Dr. Benjamin Rush, an American living in Scotland at the time, described Witherspoon’s sermons as “loaded with good sense and adorned with elegance and beauty.” Witherspoon memorized his sermons. He never carried notes to the pulpit, but his delivery did not seem rigid or rehearsed. He refrained from using dramatic gestures or elaborate language. Instead, his well-reasoned arguments conveyed his message and increased his renown.

President of the College of New Jersey
Witherspoon’s reputation as a theologian spread. In 1766, the College of New Jersey (later renamed Princeton University) proposed that he leave Scotland and become the college’s sixth president. He considered the opportunity. His wife, however, hesitated because of the treacherous transatlantic journey. Dr. Rush, a graduate of the College, convinced Witherspoon and his wife to move. In August of 1768, they arrived in Princeton with their five children and more than three hundred books.

A small colonial college, the College of New Jersey was ailing. It urgently needed funds to keep its doors open. Enrollment was low. The curriculum and instruction needed improvement. Incoming students were poorly prepared for college. As the lead instructor, college president, and fund-raiser, Witherspoon shouldered all of these challenges.
Fund-raising proved difficult. In the 1770s, conflict with Great Britain was intensifying, and many colonists wanted to hold on to their money. But Witherspoon was persuasive. He traveled extensively, preaching and soliciting contributions. Those who heard him speak described him as “a profound theologian...a universal scholar acquainted with human nature; a grave, dignified, solemn speaker.” His trips to New York, Boston, and Virginia were successes. Contributions increased.

Enrollment presented a different challenge. To attract students, Witherspoon added to the curriculum. The college changed its exclusive focus on spiritual studies. Under Witherspoon, the college offered more comprehensive courses. He expanded the library to include contemporary philosophical writings. He did not limit students’ exposure to new ideas. Instead, he encouraged them to read various perspectives. He preferred to allow reason and faith to guide their opinions. As a result of these changes, enrollment increased steadily. The graduating class of 1768 had only eleven students, but there were twenty-nine in the class of 1773.

The founders of the college wanted to educate men who would be “ornaments of the State as well as the Church.” Witherspoon himself taught one president (James Madison) and one vice president (Aaron Burr). He also instructed nine cabinet officers, twenty-one senators, thirty-nine congressmen, three justices of the Supreme Court, and twelve state governors. Five of the fifty-five members of the Constitutional Convention were his former students. Witherspoon’s impact on the ministry of the Presbyterian Church was also significant. Of the one hundred seventy-seven ministers in America in 1777, fifty-two of them had been Witherspoon’s students.

With the Revolutionary War unfolding on its doorstep, the College of New Jersey suffered. Most students left to fight. Witherspoon was forced to shut down the school. He assisted in the safe evacuation of the students in November of 1776. During the war, both British and American troops at one time or another used the college’s buildings as barracks and hospital facilities. American troops even fired into the college’s main building, Nassau Hall, during the Battle of Princeton in January 1777. Their hope was to persuade the British troops camped inside to surrender. After the war, Witherspoon worked to restore the college’s appearance, reputation, and finances. He served as its president until his death in 1794.

Service to the Colonies
Over a period of years, Witherspoon gradually became an ardent supporter of revolution. He joined his state’s Committees of Correspondence and Safety in 1774. Once the war began, he represented New Jersey in the Continental Congress from 1776–1782. In 1776, when a fellow delegate questioned whether or not the colonies were ripe for independence, Witherspoon replied, “Sir, in my judgment, the country is not only ripe for the measure, but we are in danger of rotting for want of it.” Witherspoon was the only active clergyman to sign the Declaration of Independence. He was liked for his sense of humor and pleasant personality and respected for his intellect. Witherspoon served on more than one hundred congressional committees during his six years in office. Following the Constitutional Convention in 1787, Witherspoon supported ratification at the New Jersey convention.

Witherspoon was a traditional Christian who was firmly committed to religious liberty. He feared that the Anglican Church would send a resident bishop to America who could then encroach on religious liberties. He also did not hesitate to address
political issues from the pulpit. In his “Dominion of Providence” sermon in the spring of 1776, Witherspoon declared that “the cause in which America is now in arms, is the cause of justice, of liberty, and of human nature.”

Witherspoon signed the Declaration of Independence, shepherded the College of New Jersey for three decades, and championed political and religious liberty. His most significant legacy, however, has been handed down through the work of his students. Witherspoon helped nurture a generation of revolutionary thinkers and religious leaders. Their efforts, in turn, produced the Constitution and the Bill of Rights. John Witherspoon ought to be remembered, in the words of John Adams, “as high a Son of Liberty as any Man in America.”

Reading Comprehension Questions

1. What were the characteristics of Witherspoon’s speaking style?
2. What changes did Witherspoon make in the curriculum of the College of New Jersey?
3. What national and state offices did Witherspoon hold during his career in public service?

Critical Thinking Questions

4. What is the significance of Witherspoon’s role in educating members of the Founding generation?
5. John Adams declared that Witherspoon ought to be remembered “as high a Son of Liberty as any Man in America.” Do you agree?
Letter on the Clergy in Politics

1. **Vocabulary:** Use context clues to determine the meaning or significance of each of these words and write their definitions:
   a. denomination
   b. ascertain
   c. freeholders
   d. exclusion
   e. ecclesiastical
   f. indelible
   g. injurious
   h. wholly
   i. apprehended
   j. clerical
   k. relinquished
   l. litigation
   m. ambiguous
   n. alterations
   o. deposition

2. **Context:** Answer the following questions. Note that some of the answers must be inferred.
   a. When was this document written?
   b. Where was this document written?
   c. Who wrote this document?
   d. What type of document is this?
   e. What was the purpose of this document?
   f. Who was the audience for this document?
In His Own Words: John Witherspoon on the Clergy in Politics

Letter on the Clergy in Politics

The 1777 Georgia state constitution included a provision that “No clergyman of any denomination shall be a member of the General Assembly.” John Witherspoon wrote the following letter commenting upon that statement.

Sir,

In your paper of Saturday last, you have given us the new Constitution of Georgia, in which I find the following resolution, “No clergyman of any denomination shall be a member of the General Assembly.” I would be very well satisfied that some of the gentlemen who have made that an essential article of this constitution, or who have inserted and approve it in other constitutions, would be pleased to explain a little the principles, as well as to ascertain the meaning of it.

Perhaps we understand pretty generally, what is meant by a clergyman, viz. [namely] a person regularly called and set apart to the ministry of the gospel, and authorized to preach and administer the sacraments of the Christian religion. Now suffer me to ask this question: Before any man among us was ordained a minister, was he not a citizen of the United States, and if being in Georgia, a citizen of the state of Georgia? Had he not then a right to be elected a member of the assembly, if qualified in point of property? How then has he lost, or why is he deprived of this right? Is it by offence or disqualification? Is it a sin against the public to become a minister? Does it merit that the person, who is guilty of it should be immediately deprived of one of his most important rights as a citizen? Is not this inflicting a penalty which always supposes an offence? Is a minister then disqualified for the office of a senator or representative? Does this calling and profession render him stupid or ignorant? I am inclined to form a very high opinion of the natural understanding of the freemen and freeholders of the state of Georgia, as well as of their improvement and culture by education, and yet I am not able to conceive, but that some of those equally qualified, may enter into the clerical order: and then it must not be unfitness, but some other reason that produces the exclusion.

Perhaps it may be thought that they are excluded from civil authority, that they may be more fully and constantly employed in their spiritual functions. If this had been the ground of it, how much more properly would it have appeared, as an order of an ecclesiastical body with respect to their own members. In that case I should not only have forgiven but approved and justified it; but in the way in which it now stands, it is evidently a punishment by loss of privilege, inflicted on those, who go into the office of the ministry; for which, perhaps, the gentlemen of Georgia may have good reasons, though I have not been able to discover them.

But besides the uncertainty of the principle on which this resolution is founded, there seems to me much uncertainty as to the meaning of it. How are we to determine who is or is not a clergyman? Is he only a clergyman who has received ordination from those who have derived the right by an uninterrupted succession from the apostles? Or is he also a clergyman, who is set apart by the imposition of hands of a body of other clergymen, by joint authority? Or is he also a clergyman who is set a part [sic] by the church members of his own society, without any imposition of hands at all? Or is he also a clergyman who has exhorted in a Methodist society, or spoken in a Quaker meeting, or any other religious assembly met for public worship? There are still greater difficulties.
behind: Is the clerical character indelible? There are some who have been ordained who occasionally perform some clerical functions, but have no pastoral charge at all. There are some who finding public speaking injurious to health, or from other reasons easily conceived, have resigned their pastoral charge, and wholly discontinued all acts and exercises of that kind; and there are some, particularly in New England, who having exercised the clerical office some time, and finding it less suitable to their talents than they apprehended, have voluntarily relinquished it, and taken to some other profession. . . . Do these all continue clergymen, or do they cease to be clergymen, and by that cessation return to, or recover the honorable privileges of laymen?

I cannot help thinking that these difficulties are very considerable, and may occasion much litigation, if the article of the constitution stands in the loose, ambiguous form in which it now appears; and therefore I would recommend the following alterations, which I think will make every thing definite and unexceptionable.

“No clergyman, of any denomination, shall be capable of being elected a member of the Senate or House of Representatives, because [here insert the grounds of offensive disqualification, which I have not been able to discover] Provided always, and it is the true intent and meaning of this part of the constitution, that if at any time he shall be completely deprived of the clerical character by those by whom he was invested with it, as by deposition for cursing and swearing, drunkenness or uncleanness, he shall then be fully restored to all the privileges of a free citizen; his offence shall no more be remembered against him; but he may be chosen either to the Senate or House of Representatives, and shall be treated with all the respect due to his brethren, the other members of Assembly.”

Discussion Questions

Letter on the Clergy in Politics

1. Why is Witherspoon writing this letter?
2. Why is Witherspoon concerned about the Georgia constitution’s position on clergy in the legislature?
3. Does Witherspoon think that there are valid reasons for excluding the clergy from the legislature?
4. What does Witherspoon mean by the phrase “a punishment by loss of privilege”?
5. What possible definitions does Witherspoon give for the word “clergyman”?
6. What possible problems does Witherspoon foresee about excluding members of the clergy?
7. What specific changes does Witherspoon recommend for the Georgia Constitution?
8. Does Witherspoon want his suggestions taken seriously?
A sound understanding of the United States requires an appreciation of the historical commitment of the American people to certain fundamental liberties. High on the list of these liberties is freedom of religion. The image of brave seventeenth-century English Puritans making the difficult journey across the Atlantic to American shores in pursuit of the freedom to live according to their faith is a powerful part of the American myth. Less remembered, however, is the fact that the commonwealth established by the Puritans was as intolerant as Anglican England, from which they had fled. Indeed, the road to achieving full religious liberty in the United States was long and arduous. By the time of the writing of the United States Constitution in 1787, Americans were committed to the principle of religious tolerance (or, to use the term of the time, “toleration”) and the idea of separation of church and state, but only to a limited degree. It would be another fifty years before all states granted broad religious liberty to their citizens and provided for the complete separation of church and state.

Modern ideas about freedom of religion were developed in the wake of the Protestant Reformation of the sixteenth century, which shattered the unity of Christendom and plunged Europe into political and religious conflict. Though some European states remained religiously homogeneous, either retaining the traditional faith of Roman Catholicism or adopting some brand of Protestantism, religious division within many countries led to discord and bloodshed. In England, the church established in the mid-sixteenth century by King Henry VIII (who reigned from 1509 to 1547) faced stiff resistance, first from the many Catholics who refused to abandon the faith of their ancestors, and then from the Puritans who opposed the rule of bishops and wanted to purify the church so that it included only the elect.

Henry VIII’s successors, Elizabeth I (1558–1603) and James I (1603–1625), successfully quelled opposition to the Church of England (the Anglican Church), largely through harsh persecution of dissenters. In 1642, however, England was engulfed by religious civil war, from which the Puritans emerged victorious. The Puritan Commonwealth established by Oliver Cromwell ruthlessly persecuted Anglicans and Catholics. But Puritan rule was short-lived. An Anglican monarch, Charles II, was restored to the throne in 1660. This “settlement” of the religious crisis, however, was threatened by the accession of a Catholic, James II, to the throne in 1685. Anxious Protestants conspired and invited a foreigner, William of Orange, to assume the kingship of England. William invaded England, drove James into exile, assumed the throne, and reestablished the Church of England as the national church.

In this contentious atmosphere some English political thinkers, such as John Locke, began to advocate a policy of religious toleration. Locke’s ideas reflected a key assumption of Enlightenment thought—that religious belief, like political theory, is a matter of opinion, not absolute truth. “The business of laws,” Locke wrote in his Letter on Toleration (1689), “is not to provide for the truth of opinions, but for the safety and security of the commonwealth and of every particular man’s goods and person.” Public security was in no way dependent on a uniformity of religious belief among the citizenry. “If a Jew do not believe the New Testament to be the Word of God,” Locke stated, “he does not thereby alter anything in men’s civil rights.” Rather, intolerance led to “discord and war,” and Locke warned that “no peace and security” could be “preserved amongst men so long as this opinion prevails . . . that religion is to be propagated by force of arms.” Religious belief, in Locke’s view, was a matter of individual choice, a matter for society, not for government.

Locke’s views on religious liberty had a profound influence on American thinking in the next century. Other writings, however, particularly the Bible, had at least as great an impact on American political theory. Indeed, the American experiment in religious toleration began years before the publication of
Locke’s treatise, though the early history of Puritan Massachusetts Bay was hardly indicative of the course that toleration would take in America. Established by John Winthrop in 1630, Massachusetts was a repressive place where church and state were one and where religious dissent was ruthlessly stamped out. Dissenters had few options: they could be silent, suffer persecution, or leave the colony. Roger Williams, a freethinking preacher, was forced to choose this last option, leaving Massachusetts in 1636 to establish the colony of Rhode Island.

In Rhode Island, Williams instituted toleration for all people, and his new colony quickly became a refuge for persecuted groups like Quakers and Baptists. Williams’s case for toleration was at least as radical as Locke’s. Basing his arguments on the Bible, Williams insisted that the Jews, Muslims, and atheists were also deserving of religious liberty. The only “sword” to be used in fighting their opinions was scripture itself. Intolerance was an offense to God. “An enforced uniformity of religion throughout a nation or civil state,” Williams wrote in The Bloudy Tenent of Persecution (1644), “denies the principles of Christianity.” Williams argued that forced belief was not only a violation of God’s law but also an unwise policy. “Enforced uniformity (sooner or later) is the greatest occasion of civil war, ravishing of conscience, persecution of Christ Jesus in his servants, and of the hypocrisy and destruction of millions of souls.”

Two years before the founding of Rhode Island, Cecil Calvert founded the colony of Maryland and proclaimed toleration for all Christians. Calvert himself was a Catholic, but he knew that the viability of his colony depended on luring enough Protestant settlers to make it an economic success. A policy of toleration, he hoped, would serve this purpose. In setting up Pennsylvania in the 1680s, William Penn, a Quaker, followed a similar course, making his colony a haven not only for his fellow coreligionists, but, like Rhode Island, a refuge for people of all religious sects.

Pennsylvania and Rhode Island would preserve uninterrupted their traditions of religious liberty, but in Maryland, freedom of religion would be curtailed for Catholics once Protestants came to power in the last decade of the seventeenth century. Still, the idea that some degree of religious liberty was a healthful policy for government became firmly rooted in America by the eighteenth century. Americans learned from the example of seventeenth-century England that religious persecution was ultimately detrimental to the political, social, and economic welfare of the nation. In America, where the Christian sects were more numerous than in England, the repercussions of religious intolerance would be especially adverse to the nation’s prospects. Americans’ devotion to religious freedom, then, was a product of necessity and experience as well as reason.

The crisis of empire during the 1760s and 1770s served to strengthen the American commitment to religious liberty. It was not only the intrusive economic measures passed by Parliament during these years that alarmed Americans. Patriot leaders also warned of the danger of the Anglican Church’s interference in American religious affairs. There was much talk that the British government would install a bishop in America who would become the instrument of tyranny. This idea that political and religious liberty went hand in hand was reflected in the New York Constitution of 1776, which explicitly connected “civil tyranny” with “spiritual oppression and intolerance.”

Nearly all the state constitutions written during the American independence movement reflected a commitment to some degree of religious liberty. The Massachusetts Constitution of 1780 promised that “no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience.” The Virginia Declaration of Rights of 1776, authored by George Mason, proclaimed “That Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence.” Mason’s ideas mirrored Locke’s belief that government should not intrude upon the concerns of society.

But many states limited religious liberty to Christians in general, or to Protestants in particular. The North Carolina Constitution of 1776 decreed “That no person, who shall deny the being of God or the truth of the Protestant religion . . . shall be capable of holding any office or place of trust or profit in the civil department within this State.” Similarly, the New Jersey Constitution of the same year declared that “there

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shall be no establishment of any one religious sect in this Province, in preference to another," but promised Protestants alone full civil rights. Thanks largely to the efforts of Charles Carroll of Carrollton, a Roman Catholic, Maryland’s Revolutionary Constitution was more liberal in its guarantee of religious liberty to "all persons, professing the Christian religion."

The Protestant majority in America was indeed particularly concerned about the Catholic minority in its midst. Catholics constituted the largest non-Protestant creed in the country, and it was believed that Catholicism demanded loyalty to the pope above devotion to country. The connection between Catholicism and absolutism was deeply ingrained in the American Protestant mind and was a legacy of the Reformation, which Protestants saw as a period of liberation from the ignorance, superstition, and tyranny of the Roman Catholic Church. During the crisis with England, a wave of religious hysteria swept over American Protestants, who worried that the pope would personally lead the Catholics of Canada in a military assault on American forces. "Much more is to be dreaded from the growth of Popery in America," patriot leader Samuel Adams asserted in 1768, "than from Stamp-Acts or any other acts destructive of men’s civil rights." This bigotry caused Roman Catholics to become outspoken proponents of religious toleration and the separation of church and state. In a country dominated by Protestants, this was the only realistic course for them.

All thirteen states at the time of American independence, then, acknowledged to some degree in their constitutions the principle of religious liberty. Most also provided for some degree of separation of church and state. Several states went so far as to prohibit clergymen from holding state office, a restriction in the Georgia Constitution of 1777 that the Reverend John Witherspoon of New Jersey would famously protest. But few states provided for a complete separation of church and state, for it was believed that the government should give some support to religion in general. Though a substantial number of American elites in the late eighteenth century were not church-going Christians, nearly all believed in the God of the Old Testament, and all recognized the practical value of Christianity as a check on antisocial behavior. Many of the state constitutions written in the era of independence, therefore, required that government give some support to Christianity. Though the Massachusetts Constitution guaranteed that “no subordination of any one sect or denomination to another shall ever be established by law,” it also permitted the legislature to levy taxes “for the support and maintenance of public protestant teachers of piety, religion and morality.” Similarly, the Maryland Constitution of 1776 permitted the legislature to “lay a general and equal tax for the support of the Christian religion.”

There were, however, calls for complete religious disestablishment at the state level. In Virginia, James Madison and Thomas Jefferson were two of the most prominent advocates of a strict separation of church and state. Their ideas about religious liberty were clearly influenced by John Locke and fellow Virginian George Mason. In 1785, the Virginia legislature considered a bill that would provide for public funding of Christian instruction. The measure was backed by several prominent statesmen, including Patrick Henry. But James Madison, then a member of the legislature, took the lead in opposing the bill, reminding Virginians that “torrents of blood have been spilt in the old world, by vain attempts of the secular arm, to extinguish Religious discord, by proscribing all difference in Religious opinion.” The bill was defeated, and the following year, Jefferson introduced “A Bill for Establishing Religious Freedom,” which attempted to enshrine in law the idea “that no man shall be compelled to frequent or support any religious Worship place or Ministry whatsoever.” The bill passed with minor changes.

By the time of the Constitutional Convention of 1787, there was a broad consensus regarding the proper relationship between the national government and religion: first, that the government ought not to give support to any religious sect; second, that the government ought not to require a religious test for office; third, that the government ought not to interfere with private religious practice; and fourth, that the government ought not to interfere with the right of the states to do as they wished in regard to religious establishment and religious liberty. These points of consensus were reflected in both the body of the United States Constitution and in the First Amendment, which was ratified in 1791 as part of the Bill of Rights. Article VI of the Constitution explicitly stated that
“no religious test shall ever be required as a qualification to any office or public trust under the United States.” The First Amendment declared that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

The right of the states to set their own policy in regard to religion was implicitly acknowledged in Article I of the Constitution, which stipulated that to be eligible to vote in elections for the United States House of Representatives, “the elector in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.” Several states at the time mandated a religious test as a requirement for the franchise, and the Constitution therefore tacitly approved such tests. In addition, the First Amendment’s prohibition against religious establishment applied explicitly to the national Congress alone. Indeed, it was not until after the American Civil War, in the incorporation cases, that the United States Supreme Court ruled that some of the restrictions placed on the federal government by the amendments also applied to the state governments.

By 1800, then, there was a broad consensus among Americans that religious freedom was essential to political liberty and the well-being of the nation. During the next two centuries, the definition of freedom of religion would be broadened, as states abandoned religious tests and achieved complete disestablishment and as state and federal courts ruled that various subtle forms of government encouragement of religion were unconstitutional. Shortly after the dawn of the nineteenth century, in a letter to a Baptist congregation in Danbury, Connecticut, Thomas Jefferson asserted that the First Amendment created “a wall of separation between church and state.” What Jefferson meant by this term is a subject of great debate. But there is no doubt that his words have become part of the American political creed and a rallying cry for those who seek to expand the definition of religious liberty, even to mean that religion should be removed from public life altogether.

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Suggestions for Further Reading
Thomas Jefferson accurately represented the convictions of his fellow colonists when he observed in the Declaration of Independence that a government, to be considered legitimate, must be based on the consent of the people and respect their natural rights to “life, liberty and the pursuit of happiness.” Along with other leading members of the founding generation, Jefferson understood that these principles dictated that the government be given only limited powers that, ideally, are carefully described in written charters or constitutions.

Modern theorists like John Locke and the Baron de Montesquieu had been making the case for limited government and separation of powers during the century prior to the American Revolution. Colonial Americans were quite familiar with Locke’s argument from his Two Treatises of Government that “Absolute Arbitrary Power, or Governing without settled standing Laws, can neither of them consist with the ends of Society and Government. . . .” Locke added that the reason people “quit the freedom of the state of Nature [is] to preserve their Lives, Liberties and Fortunes.” Civil society has no higher end than to provide for the safety and happiness of the people, and this is best done under a system of known rules or laws that apply equally to “the Rich and Poor, . . . the Favorite at Court, and the Country Man at plough.” For his part, Montesquieu argued that only where governmental power is limited in scope, and then parceled out among different departments, will people be free from oppression. Constitutional government, for modern natural rights theorists, should be limited government dedicated to the comfortable preservation of the people—that is, to their security, freedom, and prosperity.

John Adams echoed the beliefs of many Americans when he argued that only by creating a balance of forces within the government could the people hope to escape despotism and misery. An unchecked legislature, he observed, would be capable not only of making tyrannical laws, but of executing them in a tyrannical manner as well. In his famous draft of a constitution for the commonwealth of Massachusetts, Adams declared that the “legislative, executive and judicial power shall be placed in separate departments, to the end that it might be a government of laws, and not of men.” This document, along with his Defence of the Constitutions of Government of the United States of America, containing a strong case for checks and balances in government, were well known to the delegates who attended the Constitutional Convention of 1787.

James Wilson, one of the foremost legal scholars of the founding period and a delegate from Pennsylvania at the Constitutional Convention, agreed with Adams’ insistence that the power of government should be divided to the end of advancing the peace and happiness of the people. In the words of Wilson, “In government, the perfection of the whole depends on the balance of the parts, and the balance of the parts consists in the independent exercise of their separate powers, and, when their powers are separately exercised, then in their mutual influence and operation on one another. Each part acts and is acted upon, supports and is supported, regulates and is regulated by the rest.”

Both the Articles of Confederation and the Constitution of the United States provided for governments with limited powers. As John Jay had discovered as America’s secretary of foreign affairs, the power of the central government was severely limited under the Articles and, hence, could be trusted to a unitary legislative department. Fear of governmental tyranny and a desire to preserve the power enjoyed by the new states resulted in the creation of a central government that could not effectively oversee interstate commerce or do other things that were critical to ensuring the safety and happiness of the people. In a letter to Edmund Randolph at the end of 1786, George Washington bemoaned the “awful situation of our affairs” which he attributed to “the want of sufficient power.
in the federal head.” Washington quickly joined the movement to create a new governmental system that was equal to “the exigencies of Union,” to quote from the instructions given the delegates to the Constitutional Convention of 1787.

The Constitution of 1787 grew out of a plan drafted largely by James Madison during the winter and spring before the Convention. The “Virginia Plan” proposed a central government that was supreme over the states. Evidence that the national government was to be entrusted with considerable power could be found in the provisions for a bicameral legislature and independent executive and judicial departments.

The delegates who attended the Constitutional Convention were sufficiently versed in modern political theory to understand that they would have to divide the power of the national government if they intended to entrust it with real authority over the lives of the people and the states. They understood the dangers of imparting considerable political power to a unitary sovereign. In this connection, there was never any doubt in their minds that they should create a government of “delegated and enumerated” powers, that is, that the government should only be entrusted with specified (enumerated) powers that derived directly from the people. While they worried about the “turbulence and follies” of democracy, they recognized that government had to be based on the consent of the people to be legitimate.

The Virginia Plan anticipated the bicameral legislature and independent executive and judicial departments found in the United States Constitution today. Building on Madison’s model, the delegates assigned responsibilities to the departments based on their peculiar characteristics. The six-year term of senators, for example, seemed to make this a proper institution to involve in foreign policy (e.g., ratification of treaties) since senators would have more time than members of the House of Representatives to acquaint themselves with international affairs and their longer terms and larger constituencies (entire states) also would give them more freedom to attend to matters other than the immediate interests of constituents back home. The House of Representatives was entrusted with the important power to initiate revenue (taxation) bills precisely because the members of this chamber are tied so closely to the people by short terms and small districts.

In addition to matching powers and governmental responsibilities, the delegates were careful to position each department to “check and balance” the other departments. Examples are the executive’s veto power, the congressional impeachment power, and the judicial review power entrusted to the Supreme Court, the only national court formally established by the Constitution. Although in good Lockean fashion the legislative department was designed to be the preeminent department, it was still subjected to checks by the other branches of the government. Separation of powers as well as the system of checks and balances were devices for reducing the threat of governmental tyranny, not excluding legislative tyranny.

However, the constitutional arrangement, put into its final wording by Gouverneur Morris, was not driven entirely by a desire to eliminate the threat of tyrannical government. The system of separated and divided powers also was intended to promote competence in government. The president can employ his veto not only to check legislative action that he considers irresponsible, but to provoke Congress to improve a legislative enactment. The Senate can use its authority to ratify presidential nominations of cabinet officers or judges to ensure that qualified candidates are named to fill these positions.

Writing in Federalist No. 9, Alexander Hamilton identified the principle of separated and divided powers, along with checks and balances, as among the inventions of the new science of politics that had made republican government defensible. Madison described in Federalist No. 51 the benefits of the governmental arrangement represented in the new Constitution: “In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then 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 control each other, at the same time that each will be controlled by itself.” Significantly, Anti-Federalists as well as Federalists agreed that governmental powers should be limited and that these powers should be subject to internal as well as external checks.
It is important to emphasize that the Framers settled on an arrangement that divided yet blended the legislative, executive, and judicial powers. This facilitates interdepartmental checking while promoting mature deliberation. Their aim was to create a decent and competent democracy, something beyond mere non-tyrannical government. They placed the whole of the government, and even the people, under constitutional limitations. The Constitution is the supreme law of the land, not the enactments of Congress or the order of the president or the momentary will of the people. As Chief Justice Marshall declared in *Marbury v. Madison* (1803), “The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation.” Even the desires of the people are held in check by the Constitution. The political system still meets the criteria of democratic government, however, since the people hold the power, through their representatives, to amend the Constitution.

The paradigm of constitutional government embraced by the American people in 1787, that is, limited government based on the consent of the people and committed to the protection of fundamental rights, has become the dominant model throughout the world. The rhetoric of rights, whether couched in the language of natural rights or human rights, is universally appealing. Also universally accepted is the argument that rights are most secure when governmental powers are limited in scope and subject to internal and external checks.

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Suggestions for Further Reading