The sun was setting as the lone gentleman exited his stagecoach and entered the chamber. He had wanted to get there the day before, but transportation problems prevented him from joining his fellow Supreme Court Justices on time for their first assembly. It was February 2, 1790.

It was quiet and still, his footsteps the only sound in the courtroom. He looked up at the bench and pondered the challenges he would face as he took his place there. This was where John Jay would assume his role as the first Chief Justice of the United States Supreme Court. Just as George Washington would be defining the role of the executive branch as the new nation’s first president, Jay knew his job would be to clarify the role of the judicial branch. He knew it would be a challenge, but he was ready for it—he had faced challenges before.

**Background**

John Jay was born in 1745 in New York City to a prominent family and graduated from King’s College, now called Columbia University, in 1764. Four years later, he began to practice law. Through his work, Jay gained notoriety throughout New York. Britain’s aggressive response to the Boston Tea Party convinced Jay to support the Patriots’ efforts against taxation without representation. He became well known in the patriotic circles of New York. As a result, Jay was elected to serve in the First Continental Congress. He soon wrote the *Address to the People of Great Britain*. In the *Address*, he argued that the American colonists deserved the same rights and privileges that British subjects received in England. He defended many rights that would later be guaranteed in the Bill of Rights—property, jury trial, due process, and religion.

Although Jay opposed many British policies, he did not support independence from Great Britain in 1774. Like many of his time, he favored a more moderate approach. He passionately opposed Parliament’s actions toward the colonies. However, he hoped the colonies could restore their relationship with Britain.

At the Second Continental Congress in 1775, he encouraged a moderate approach to Britain. The majority of the delegates insisted on independence instead. Jay resigned from Congress rather than sign the Declaration of Independence. But he joined his fellow Patriots once the rest of the colonists rallied behind the action.

Like many Congressmen, Jay returned to state matters in 1777. He drafted the New York constitution and served as Chief Justice of New York. New Yorkers selected Jay as a delegate to the Continental Congress in 1778. His fellow delegates elected him to serve as President of the Assembly, the highest office in the nation under the Articles of Confederation.

**The Diplomat and Chief Justice**

Following his one-year term as president of the Assembly, Congress sent Jay on a series of diplomatic missions. He visited Spain to gain financial aid and official recognition of
the new nation, but his efforts failed. He then set off to join Benjamin Franklin and John Adams in Paris to successfully establish a peace treaty with Great Britain.

Jay returned to the United States of America in 1784. While he was away, Congress appointed him the secretary of foreign affairs. He found the job difficult to execute under the Articles of the Confederation, though, because each state was free to act alone. He had no power to make meaningful treaties with other nations. The experience strengthened his resolve for a centralized federal government. Consequently, he wrote five of *The Federalist Papers* to encourage ratification of the new Constitution. Upon ratification of the new Constitution in 1789, George Washington appointed Jay Chief Justice of the first Supreme Court. Jay accepted the position and began clarifying the role of the judiciary in the new government.

**Jay's Treaty**

In 1794, George Washington asked Jay to take a leave of absence from the Court. The British recently had seized American trading ships in the French West Indies, a large source of trade revenue and goods for the United States. The end of trade in the region could have crippled America's fragile economy. Washington hoped to avoid economic destruction by striking an agreement with the British. He sent Jay to do the job.

Jay's Treaty, as it would be called, was signed in June 1794. A number of treaty provisions favored the United States, but some Americans believed the British had gained an economic advantage. Reaction to the treaty was so hostile that Jay was burned in effigy in some cities. The United States secured equal access to Great Britain and the East Indies, but received harsh restrictions on trade in the British West Indies. In contrast, the treaty granted Britain the status of most favored nation in trade at American ports.

In addition, Jay failed to secure compensation for slaves taken by the British, or protection from imprisonment for American sailors. Southern slave-owners believed that Jay, an abolitionist, did not support compensation. They accused Jay of intentionally compromising on the issue. Many Americans claimed Jay had given the British everything they wanted and had weakened American power as a result. While the treaty received a negative reception in the United States, it accomplished the United States's goal of avoiding war with Britain.

**A Governor's Efforts**

Upon returning to the United States from England in 1795, John Jay learned he had been elected governor of New York. He never requested or agreed to the job. Nevertheless, he permanently resigned from the Supreme Court and took on the position. As governor, Jay fought for the emancipation of slaves. Throughout his years of public service, Jay had battled against slavery. In 1785, he created the New York Manumission Society. The Society organized anti-slavery actions, such as lawsuits and boycotts. As a result of consistent efforts, Jay signed an emancipation bill passed by the New York legislature in 1799.

The next year, John Adams requested that Jay return to his role of Chief Justice, but the retired governor refused. Jay had grown disillusioned with the court system, especially with judges serving on lower courts. He decided not to participate until the system was reformed. Instead, he spent his remaining days on his farm in Westchester until his death in 1829.
Reading Comprehension Questions
1. On which diplomatic missions did Congress send Jay, and why?
2. To which position did George Washington appoint Jay following the ratification of the Constitution?
3. What was the goal of Jay's Treaty? Did the treaty accomplish that goal?

Critical Thinking Questions
4. Why did Jay refuse to sign the Declaration of Independence? Do you agree with his decision? Why or why not?
5. John Jay consistently fought against slavery at both a local and national level. What steps did he take to further the abolition of slavery?
VOCABULARY AND CONTEXT QUESTIONS

John Jay's letter to Elias Boudinot (1819)

1. **Vocabulary:** Use context clues to determine the meaning or significance of each of these words and write their definitions:
   a. concur
   b. migration
   c. importation
   d. competent
   e. toleration
   f. repugnant
   g. discordancy

2. **Context:** Answer the following questions.
   a. When was this document written?
   b. Who wrote this document?
   c. What type of document is this?
   d. What was the purpose of this document?
John Jay's letter to Elias Boudinot (1819)

17 Nov. 1819

I have received the copy of a circular letter which, as chairman of the committee appointed by the late public meeting at Trenton respecting slavery, you were pleased to direct to me on the 5th instant. Little can be added to what has been said and written on the subject of slavery. I concur in the opinion that it ought not to be introduced nor permitted in any of the new States; and that it ought to be gradually diminished and finally abolished in all of them.

To me the constitutional authority of the Congress to prohibit the migration and importation of slaves into any of the States, does not appear questionable. The first article of the Constitution specifies the legislative powers committed to the Congress. The ninth section of that article has these words:

“The migration or importation of such persons as any of the now existing States shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808. But a tax or duty may be imposed on such importations, not exceeding ten dollars for each person.”

I understand the sense and meaning of this clause to be, that the power of the Congress, although competent to prohibit such migration and importation, was not to be exercised with respect to the then existing States (and them only) until the year 1808; but that the Congress were at liberty to make such prohibition as to any new State, which might, in the mean time, be established, and further, that from and after that period, they were authorized to make such prohibition, as to all the States, whether new or old.

It will, I presume, be admitted, that slaves were the persons intended. The word slaves was avoided, probably on account of the existing toleration of slavery, and of its discordancy with the principles of the Revolution; and from a consciousness of its being repugnant to the following positions in the Declaration of Independence, viz.:

“We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them are life, liberty, and the pursuit of happiness.”

Directions: Fill in the main ideas of John Jay’s argument in his letter to Elias Boudinot. Next, analyze the main points of his argument by answering the questions below each document.

A. Article 1, Section 9 of the U.S. Constitution (1787)

The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

John Jay’s Main Idea:

______________

What three points does Jay make in his letter about Article 1, Section 9 of the U.S. Constitution and the question of slavery in the new states?

1. 

2. 

3. 

B. The Declaration of Independence (1776)

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

John Jay’s Main Idea:

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According to Jay, what three positions of the Declaration of Independence is slavery “repugnant to”?

1. 

2. 

3. 

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.

Limited Government
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.

David E. Marion, Ph.D.
Hampden-Sydney College

### Suggestions for Further Reading