The six-foot tall, bespectacled delegate to the Constitutional Convention returned to his home state of Pennsylvania and faced the gathering crowd in the State House yard. The group that gathered to hear his remarks was larger than he anticipated. Having just returned from helping draft the new nation’s Constitution, James Wilson knew it would be his job to respond to criticisms of the proposed new government.

Wilson was a staunch supporter of the new Constitution. He was sure of himself and his opinions about the document. He also knew his strong opinions had gotten him into trouble in the past. Wilson had been recalled from Congress ten years earlier for forcefully opposing some features of the proposed Pennsylvania state constitution.

He had served his state well at the Constitutional Convention, putting his well-known analytical skills to work. And ultimately, Wilson knew his audience realized he would tell them the truth, without mincing words or hedging his ideas. He drew in his breath and began his speech.

Background

James Wilson was born near St. Andrews, Scotland, in 1742. He immigrated to America in 1765 and settled in Pennsylvania. He worked briefly as a tutor at the College of Philadelphia (now The University of Pennsylvania) before joining the law firm of John Dickinson. Dickinson was a respected lawmaker in Pennsylvania and early opponent of British policies in the colonies.

Wilson gained knowledge and skill during his time at Dickinson’s office. In 1768 he began his own practice in Reading, Pennsylvania. He married Rachel Bird in 1771 and they would have six children together. Wilson’s law practice enjoyed success. However, the newlywed lawyer saw a chance to make money in land speculation. He borrowed money to buy land, hoping to sell it later at a higher price.

Wilson’s standing grew over the next few years as he became more involved in politics. In 1774, he became chairman of the Carlisle Committee of Correspondence. This group served as an underground forum for anti-British discussion. In 1774, Wilson published Considerations on the Nature and Extent of the Legislative Authority of the British Parliament. He argued that Parliament had no power over colonial activities—especially taxation—without representation. A wide audience read the essay and James Wilson was established as a Patriot leader in Pennsylvania. He served in the Second Continental Congress and signed the Declaration of Independence.

Radical Ideas: Power to the People

Wilson reached the height of his career at the Constitutional Convention in 1787. The strong-willed leader campaigned for the popular election of the president. The opposition, however, wanted the state governments to control the process.

During the Constitutional Convention, Wilson spoke out for popular sovereignty in all areas of the new government. His emphasis was on the development of the executive office, the election process, and fair representation. He argued that, with the signing of...
the Declaration of Independence, the states gave up their power to the people. Wilson's defense of popular sovereignty set him apart from some of the more reserved advocates of republican government in the United States.

Wilson's position that the new national government should be based on popular sovereignty and not state sovereignty represented a significant shift from the situation that existed under the Articles of Confederation. Some major figures from the Founding period, such as Patrick Henry and Thomas Jefferson, disagreed with Wilson and continued to argue long after the Convention that substantial power should be reserved to the individual states.

Wilson is credited with forcing a compromise that resulted in the creation of the Electoral College. This system combined state selection of representatives and proportionate representation. The Electoral College thereby made sure that state governments would not have complete or direct control over elections.

Once the Constitution was proposed, Wilson returned to his home state to assist in the process of ratification. Wilson addressed several issues surrounding the Constitution in his State House speech in October 1787. Opponents of the Constitution complained that the document lacked a bill of rights. Wilson argued that a bill of rights was not needed because the people kept powers not clearly granted to the government.

He confessed that the Constitution was not exactly as he would like it. He asserted, however, that the document, taken as a whole, was as close to perfect as possible. He said, “I am satisfied that anything nearer to perfection could not have been accomplished.” In part because of his support, Pennsylvania became the second state to approve the new Constitution.

The influence of his words was not limited to his home state. His 1787 speech was published and read widely in the new nation. Historians call it one of the most influential documents of the ratification debate.

**Justice Wilson and Popular Sovereignty**

In 1789, President George Washington appointed Wilson Associate Justice of the first Supreme Court. The forty-seven-year-old Wilson had lobbied for the position of Chief Justice. However, Washington gave that honor to John Jay. The new president believed Wilson to be an excellent lawyer and statesman, but a lack of tact and consistent bad investments had stained his reputation.

Wilson rendered his most influential opinion in *Chisholm v. Georgia* in 1793. He established that a citizen of one state could sue the government of another state. In 1795, however, the Eleventh Amendment overturned the decision.

**Professor of Law**

During the same time period, Wilson served as the University of Pennsylvania's first professor of law (1790–1791). He lectured on the basic principles of what would become the American system of jurisprudence. Through these lectures, Wilson continued to stress the sovereign power of the people. He used the symbol of a pyramid to illustrate his point. A nation that puts government before the people (reversing the pyramid) will surely collapse.

Wilson also lectured on cruel and unusual punishment as set forth in the Eighth Amendment. Wilson affirmed that, while unpleasant to consider or enforce, criminal law prevents crime. He listed three qualities of effective punishment: moderation,
speediness, and certainty. He believed that a humane and civilized nation must treat criminals in humane and civilized ways.

**Debt and Death**

Wilson’s legal profession thrived, but he fell further into debt with each land speculation. He experienced tragedy in his personal life. His wife passed away in 1786. He remarried and had one son who died in infancy. By the 1790s he had made too many bad investments. His creditors demanded repayment of hundreds of thousands of dollars in loans. While still serving on the Supreme Court he spent time in debtor’s prison, from which he escaped twice. Distraught over the state of his finances and fatigued by two decades of labors on behalf of the new republic, he passed away in 1798 in Edenton, North Carolina.

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**Reading Comprehension Questions**

1. What argument did Wilson present about the Constitution to the Pennsylvania State House in 1787?
2. What compromise is Wilson credited with regarding presidential election procedure?
3. What judicial appointment did President Washington give James Wilson? Was this the office Wilson truly desired?

**Critical Thinking Questions**

4. Why was Wilson’s philosophy of popular sovereignty a radical idea?
5. At the time of the Founding and perhaps into the twentieth century, Americans tended to think of themselves as citizens of their individual state. Do you think of yourself as, for example, a “Texan,” a “Floridian,” or as an “American”? Or as both? Neither? Explain your reasoning.
VOCABULARY AND CONTEXT QUESTIONS

Excerpts from “A Charge Delivered to the Grand Jury”

1. **Vocabulary:** Use context clues to determine the meaning or significance of each of these words and write their definitions:
   a. jurisprudence
   b. render
   c. preventives
   d. moderation
   e. diminished
   f. unfounded
   g. inconsistent
   h. detecting
   i. dastardly
   j. contemptible
   k. prosperity

2. **Context:** Answer the following questions.
   a. Who wrote this document?
   b. When was this document written?
   c. What type of document is this?
   d. What was the purpose of this document?
IN HIS OWN WORDS: JAMES WILSON ON CRUEL AND UNUSUAL PUNISHMENT

“A Charge Delivered to the Grand Jury” (1791)

Directions: Read Wilson’s “A Charge Delivered to the Grand Jury” (1791) and complete Handouts B and D.

Gentlemen of the grand jury, to prevent crimes is the noblest end and aim of criminal jurisprudence. To punish them is one of the means necessary for the accomplishment of this noble end and aim.

There are, in punishments, three qualities, which render them the fit preventives of crimes. The first is their moderation. The second is their speediness. The third is their certainty.

We are told by some writers, that the number of crimes is unquestionably diminished by the severity of punishments. [This] opinion is unfounded and . . . inconsistent with the principles of our nature, and wise and good government . . . .

When . . . punishments are moderate and mild, every one will, from a sense of interest and of duty, take his proper part in detecting, in exposing, in trying, and in passing sentence on crimes.

A nation [that tolerates] cruel punishments becomes dastardly and contemptible. For, in nations, as well as individuals, cruelty is always attended by cowardice. [Cruelty] is hostile to the prosperity of nations, as well as to the dignity and virtue of men.


James Wilson
**Analysis: James Wilson on Cruel and Unusual Punishment**

**Directions:** After reading excerpts from “A Charge Delivered to the Grand Jury” (1791), read each quote and accompanying scenario. Then fill in the chart, explaining what Wilson’s response would likely be to each scenario and why.

<table>
<thead>
<tr>
<th>EXCERPT FROM WILSON’S “CHARGE”</th>
<th>SCENARIO</th>
<th>WILSON’S LIKELY REACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. To prevent crimes is the noblest end and aim of criminal jurisprudence.</td>
<td>A new school policy requires a minimum three-day suspension for fighting on school grounds. One year later, fighting in school is down by more than half.</td>
<td></td>
</tr>
<tr>
<td>2. There are, in punishments, three qualities which render them the fit preventives of crimes. The first is their moderation.</td>
<td>A town enacts a curfew for individuals under age eighteen. Anyone under age eighteen who is found out after 10:00 PM will be placed under house arrest for six months and fined $5,000.</td>
<td></td>
</tr>
<tr>
<td>3. The second is their speediness.</td>
<td>A man who has confessed to more than a dozen armed robberies will serve ten years in prison as part of a plea bargain, but he remains free on bail for a year until his formal sentencing hearing.</td>
<td></td>
</tr>
<tr>
<td>4. The third is their certainty.</td>
<td>A teacher explains that anyone who disrupts class will be given a detention, but several students who loudly disrupt are not given detention.</td>
<td></td>
</tr>
<tr>
<td>5. A nation [that tolerates] cruel punishments becomes dastardly and contemptible.</td>
<td>A government responds to a rising crime rate by requiring a lifetime in solitary confinement for all violent crimes. An advocacy group petitions lawmakers to reconsider the policy, and after a national debate, the requirement is repealed.</td>
<td></td>
</tr>
<tr>
<td>6. For nations, as well as individuals, cruelty is always attended by cowardice.</td>
<td>A state which imposes the death penalty by electric chair has three executioners throw three switches at the same time, so that it is never known which switch, and therefore which person, actually executed the prisoner.</td>
<td></td>
</tr>
</tbody>
</table>
As Benjamin Franklin left Philadelphia’s Convention Hall in September 1787, upon the completion of the work of the Framers of the Constitution, a woman approached him and asked the old sage of the Revolution what the delegates had created. Franklin responded, “A republic, Madame, if you can keep it.” The woman's reaction to Franklin's reply is left unrecorded by history, but she might well have asked Franklin for a more detailed answer. Though the word “republic” was common currency in America at the time, the meaning of the term was imprecise, encompassing various and diverse forms of government.

Broadly, a republic meant a country not governed by a king. The root of the word is the Latin, res publica, meaning “the public things.” “The word republic,” Thomas Paine wrote, “means the public good, or the good of the whole, in contradistinction to the despotic form, which makes the good of the sovereign, or of one man, the only object of the government.” In a republic, the people are sovereign, delegating certain powers to the government whose duty is to look to the general welfare of society. That citizens of a republic ought to place the common good before individual self-interest was a key assumption among Americans of the eighteenth century. “Every man in a republic,” proclaimed Benjamin Rush, “is public property. His time and talents—his youth—his manhood—his old age, nay more, life, all belong to his country.”

Republicanism was not an American invention. In shaping their governments, Americans looked to history, first to the ancient world, and specifically to the Israel of the Old Testament, the Roman republic, and the Greek city-states. New Englanders in particular often cited the ancient state of Israel as the world’s first experiment in republican government and sometimes drew a parallel between the Twelve Tribes of Israel and the thirteen American states. In 1788, while ratification of the Constitution was being debated, one Yankee preacher gave a sermon entitled, “The Republic of the Israelites an Example to the American States.” Indeed, the Bible was cited by American authors in the eighteenth century more often than any other single source.

Americans not only knew their Bible, but also the history of the Greeks and Romans. The elite class mastered ancient languages and literature, a requirement of colleges at the time. To these men of the eighteenth century, ancient languages were not dead, nor were ancient events distant; rather, the worlds of Pericles and Polybius, Sallust and Cicero were vibrant and near. The relatively minor advancements in technology across 2,000 years—people still traveled by horse and sailing ship—served to reinforce the bond eighteenth-century Americans felt with the ancients.

Like the Greeks and Romans of antiquity, Americans believed that government must concern itself with the character of its citizenry. Indeed, virtue was “the Soul of a republican Government,” as Samuel Adams put it. Virtue had two connotations, one secular and the other sacred. The root of the word was the Latin, vir, meaning “man,” and indeed republican virtue often referred to the display of such “manly” traits as courage and self-sacrifice for the common good. These qualities were deemed essential for a republic’s survival. “A popular government,” Patrick Henry proclaimed, “cannot flourish without virtue in the people.” But virtue could also mean the traditional Judeo-Christian virtues, and many Americans feared that God would punish the entire nation for the sins of its people. “Without morals,” Charles Carroll proclaimed, “a republic cannot subsist any length of time.” New Englanders in particular sought to have society’s institutions—government and schools as well as churches—inculcate such qualities as industry, frugality, temperance, and chastity in the citizenry. The Massachusetts Constitution of 1780, for example, provided for “public instructions in piety, religion, and morality.”

The second ingredient of a good republic was a well-constructed government with good institutions.
“If the foundation is badly laid,” George Washington said of the American government, “the superstructure must be bad.” Americans adhered to a modified version of the idea of “mixed” government, advocated by the Greek thinker Polybius and later republican theorists. A mixed republic combined the three basic parts of society—monarchy (the one ruler), aristocracy (the rich few), and democracy (the people)—in a proper formula so that no one part could tyrannize the others. But Americans believed that the people of a republic were sovereign, so they sought to create institutions that approximated the monarchical and aristocratic elements of society. The Framers of the Constitution did just this by fashioning a single executive and a Senate once removed from the people. The problem, as John Adams pointed out in his Thoughts on Government, was that “the possible combinations of the powers of society are capable of innumerable variations.”

Americans had every reason to be pessimistic about their experiment in republicanism. History taught that republics were inherently unstable and vulnerable to decay. The Roman republic and the city-state of Athens, for instance, had succumbed to the temptations of empire and lost their liberty. The histories of the Florentine and Venetian republics of Renaissance Italy too had been glorious but short-lived. Theorists from the ancient Greek thinker Polybius to the seventeenth-century English radical Algernon Sidney warned that republics suffer from particular dangers that monarchies and despotisms do not. Republics were assumed to burn brightly but briefly because of their inherent instability. One element of society always usurped power and established a tyranny.

The great danger to republics, it was generally believed, stemmed from corruption, which, like virtue, had both a religious and a worldly meaning. Corruption referred, first, to the prevalence of immorality among the people. “Liberty,” Samuel Adams asserted, “will not long survive the total Extinction of Morals.”

“If the Morals of the people” were neglected, Elbridge Gerry cautioned during the crisis with England, American independence would not produce liberty but “a Slavery, far exceeding that of every other Nation.”

This kind of corruption most often resulted from avarice, the greed for material wealth. Several American colonial legislatures therefore passed sumptuary laws, which prohibited ostentatious displays of wealth. “Luxury . . . leads to corruption,” a South Carolinian declared during the Revolutionary era, “and whoever encourages great luxury in a free state must be a bad citizen.” Another writer warned of the “ill effect of superfluous riches” on republican society. Avarice was seen as a “feminine” weakness; the lust for wealth rotted away “masculine” virtues. John Adams bemoaned “vanities, levities, and fopperies, which are real antidotes to all great, manly, and warlike virtues.”

A mixed republic referred to placing private interest above the common good. This temptation plagued public officials most of all, who had ample opportunity to misappropriate public funds and to expand their power.

The second meaning of corruption referred to fear of government’s tendency to expand its power at the expense of the people’s liberty was part of Americans’ English political heritage. They imbibed the writings of late-seventeenth-century English radicals and eighteenth-century “country” politicians who were suspicious of the power of British officials (the “court”). Government corruption was manifested in patronage (the awarding of political office to friends), faction (the formation of parties whose interests were opposed to the common good), standing (permanent) armies, established churches, and the promotion of an elite class. Power, these country writers argued, was possessed by the government; it was aggressive and expansionist. Liberty was the property of the governed; it was sacred and delicate. The history of liberty in the world was a history of defeat by the forces of tyranny.

Though the history of republicanism was a dismal one, the lessons of history as well as their own colonial experience convinced the American Founders that they possessed sufficient information on which to base a new science of politics. “Experience must be our only guide,” John Dickinson proclaimed at the Philadelphia Convention; “reason may mislead us.” The Framers of the United States Constitution all had experience as public servants,
and it must be remembered that the document they produced did not spring forth as something entirely new in the American experience. Rather, the Founders had learned much from the operation of their colonial charters, state constitutions, and the Articles of Confederation.

At Philadelphia, the Founders focused on the proper construction of the machinery of government as the key to the building of a stable republic. The Constitution makes no mention of the need for virtue among the people, nor does it make broad appeals for self-sacrifice on behalf of the common good. It is a hard-headed document forged by practical men who had too often witnessed avarice and ambition among their peers in the state house, the courtroom, and the counting house. A good constitution, the Founders held, was the key to good government. Corruption and decay could be overcome primarily through the creation of a written constitution—something England lacked—that carefully detailed a system in which powers were separated and set in opposition to each other so that none could dominate the others.

James Madison, often called “The Father of the Constitution” because of the great influence of his ideas at Philadelphia, proposed to arrange the machinery of government in such a fashion as not to make virtue or “better motives” critical to the advancement of the common good. Acknowledging in The Federalist Papers that “enlightened statesmen will not always be at the helm,” Madison believed that the separate powers of government—legislative, executive, and judicial—must be set in opposition to one another, so that “ambition must be made to counteract ambition.”

“In framing a government which is to be administered by men over men,” Madison asserted, “the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”

James Wilson, representing Pennsylvania at the Philadelphia Convention, declared that the Constitution’s separation of powers and checks and balances made “it advantageous even for bad men to act for the public good.” This is not to say that the delegates believed that the republic could survive if corruption vanquished virtue in society. Madison himself emphasized the importance of republican virtue when defending the new government in The Federalist Papers. But the Framers agreed with Madison that men were not angels, and most were satisfied that the Constitution, as George Washington put it, “is provided with more checks and barriers against the introduction of Tyranny . . . than any Government hitherto instituted among mortals.”

The question remained, however, whether one part of society would come to dominate. No matter how perfect the design, the danger remained that a faction would amass enough political power to take away the liberty of others. To combat this problem, classical republican theory called for creating a uniformity of opinion among the republican citizenry so that factions could not develop. The ancient Greek city-states, for example, feared anything that caused differentiation among citizens, including commerce, which tended to create inequalities of wealth and opposing interests. In contrast, Madison and the Founders recognized that factionalism would be inherent in a commercial republic that protected freedom of religion, speech, press, and assembly. They sought only to mediate the deleterious effects of faction.

Republics also were traditionally thought to be durable only when a small amount of territory was involved. The Greek city-states, the Roman republic, the Italian republics, and the American states all encompassed relatively small areas. When the Roman republic expanded in its quest for empire, tyranny was the result. Madison turned this traditional thinking on its head in The Federalist Papers, arguing that a large republic was more conducive to liberty because it encompassed so many interests that no single one, or combination of several, could gain control of the government.

Not all Americans accepted the Madisonian solution. Agrarians, such as Thomas Jefferson, were uncomfortable with the idea of a commercial republic centered on industry and sought to perpetuate a nation of independent farmers through the expansion of the frontier. Though uneasy about the “energetic government” created by the Constitution, Jefferson endorsed the Framers’ work after a bill of rights was added to the document. "Old republicans" like Samuel Adams and George Mason opposed the Constitution, even after the addition of a bill of rights, fearing that the power granted to the central government was too great and wistfully looking back to the Revolutionary era when virtue, not ambition, was the animating principle of government. But in 1789, as the new government went into operation,
most Americans shared the optimism of Benjamin Franklin, who had decided at the conclusion of the Philadelphia Convention that the sun carved into the back of the chair used by George Washington was a rising—not a setting—sun, and thereby indicative of the bright prospects of the nation.

“We have it in our power to begin the world over again,” Thomas Paine had written in 1776, during the heady days of American independence. And indeed the American Founders in 1787 were keenly aware that they possessed a rare opportunity.

Like the legendary Lycurgus of Ancient Greece, they were to be the supreme lawgivers of a new republic, a novus ordo seclorum or new order of the ages. The American Founders were aware that the eyes of the world and future generations were upon them, and they were determined to build an eternal republic founded in liberty, a shining city upon a hill, as an example to all nations for all time.

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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.

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.

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Suggestions for Further Reading