The Framers of the Constitution had a rich intellectual foundation and long practical experience with representative legislatures to draw from as they framed the new Constitution and founded a new nation.

In their reading of classics and ancient history, they derived lessons about popular government and assemblies. The Founders harbored a negative view of direct democracy from ancient Greece as they often equated it with mob rule. As James Madison stated in *Federalist No. 55*: “Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob.” On the other hand, the Founders greatly admired the republican government of ancient Rome, which had both a Senate and popular assemblies as well as separation of powers. The Founders argued that every branch, while remaining separate, should receive its authority from the whole people, not just the few. The Founders admired Rome’s separation of powers, but rejected the idea that government should be mixed. Instead, they argued, every branch, while remaining separate, should receive its authority from the whole people.

The British tradition of constitutional monarchy with different branches of government and a representative Parliament divided into a House of Lords and a House of Commons also provided an example of government with separation of powers. Most of the American colonial legislatures, and those of the states after declaring independence, followed this example and were bicameral, or had two houses.

The Founders drew heavily on the thinkers of the eighteenth-century Enlightenment, or Age of Reason. Among the most important political philosophers who influenced the Founders’ reasoning on separation of powers and checks and balances was Montesquieu. In his *Spirit of the Laws* (1748), Montesquieu defended the separation of powers and warned that tyranny would result “if the same man or the same body of principal men...exercised these three powers: that of making the laws [legislative], that of executing public resolutions [executive], and that of judging the crimes or the disputes of individuals [judicial].” But, each branch must have a check over the others in order to “correct what has been ordered by another.”

The states ratified the Articles of Confederation in 1781. It included many principles that sought to limit national and executive power strictly in the framework of government, but those principles marred its practical effectiveness. The national Congress was unicameral and based upon equal suffrage regardless of the size of each state. Moreover, this “firm league of friendship” was more of an alliance of separate states than a plan of government with adequate powers for a strong nation-state. The federal principle at the time located sovereignty and the vast majority of powers in the states. The Articles delegated few powers to the national government which lacked power to tax, raise armies, or regulate interstate commerce. The Congress selected a weak national executive, and a national judiciary did not exist.
Therefore, the Articles did not provide for a separation of powers in different branches or a system of checks and balances.

The Framers at the Constitutional Convention debated the principles of republican government, federalism, separation of powers, and checks and balances throughout the summer of 1787. They unanimously agreed that the government would be republican, or representative of the sovereign people, who gave their consent to form a government to protect their natural rights. James Madison (Virginia) considered “an election of one branch at least of the Legislature by the people immediately, as a clear principle of free Government.” James Wilson (Pennsylvania) agreed that the new government “ought to flow from the people at large.”

The idea of federalism was central to the discussion of the Congress as the Virginia and New Jersey Plans were debated throughout June and early July. Oliver Ellsworth (Connecticut), supported often by John Dickinson (Delaware) and George Mason (Virginia), defended the federal principle that the states would share powers in the national government by having state legislatures choose Senators who would represent the interests of the states. Ellsworth said, “An equality of voices was conformable to the federal principle and was necessary to secure the Small States against the large.”

When the delegates deliberated over a national executive and judiciary in July and August, they based their discussions upon the principles of a separation of powers and checks and balances. Each branch would have a different function and powers, but each would have a check over the other. For example, the legislature specifically would be checked by vetoes by the executive but could override vetoes by a two-thirds vote in both houses. The legislature could impeach and remove the executive and judges from office. The Senate would vote whether to ratify treaties made by the executive.

One key feature of both principles was embodied in the idea of a bicameral Congress with somewhat different powers in each house of Congress and the central provision that a bill would have to pass both houses to become law. Therefore the separation of powers encompassed not only the three branches of government, but also an internal separation of powers within the legislature itself. This was done to prevent the legislature from becoming too powerful and too beholden to an immediate majority. As Madison wrote in Federalist No. 51, “A dependence on the people is, no doubt, the primary control on the government, but experience has taught mankind the necessity of auxiliary precautions.” The precautions were the constitutional principles and devices of dividing and checking power. In republics, the “legislative authority necessarily predominates” and threatens to produce a legislative tyranny. Therefore, a control on that power was “to divide the legislature into different branches” with different terms and powers.

During the ratification debate, the Federalists defended the handiwork of the Convention and argued that it supported sound political principles. In Federalist No. 39, James Madison defined republican government rooted in consent and representation. “We may define a republic... [as] a government which derives all its powers directly or indirectly from the great body of the people; and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior.” This Constitution satisfies the true principles of a republic, they argued, because all the branches
are derived “directly or indirectly from the great body of the people,” even the judiciary.

In the same essay, Madison argued that the new government and its Congress are “partly national, partly federal.” The Congress had a national House of Representatives that “will derive its powers from the people of America, and the people will be represented.” On the other hand, the federal Senate that “will derive its powers from the states, as political and co-equal societies; and these will be represented on the principle of equality.”

In *Federalist No. 47*, Madison explained the principles of separation of powers and checks and balances that were drawn from Montesquieu. “The accumulation of all powers, legislative, executive, and judiciary, in the same hands... may justly be pronounced the very definition of tyranny.” At the same time, however, Madison demonstrated that the Constitution and state constitutions have checks and balances of the separate branches over each other to prevent any branch from assuming too much power and creating tyranny.

The Anti-Federalists disagreed with the Federalist understanding of the new Constitution and its principles related to the legislative branch. In his first essay, Brutus warned that the republican principle would be violated in an expansive country because “the people at large would be acquainted with very few of their rulers.” One significant unifying concern of different Anti-Federalist writers was that so much power was consolidated in the national government that it destroyed the federal principle and the power of the states regardless of the existence of the Senate. Many other Anti-Federalists feared that a small and aristocratic Senate, pursuing privilege and self-interest, would subvert republican government by forming dangerous, corrupt combinations, especially with the executive. In addition, Anti-Federalists anticipated that the powerful new central government would violate the rights of the people, which led to their insistence that a bill of rights be added to the Constitution.

The new government in the early republic worked out the specific boundaries of the constitutional powers of Congress in relation to the other branches and the states when specific circumstances arose. The arguments of the Federalists seemed to have been vindicated by good governance until after the Civil War when the constitutional lines between the branches of government and the national and state governments became increasingly blurred.
CRITICAL THINKING QUESTIONS

1. What three political philosophies or philosophers contributed to the framework of government developed by the American Founders?

2. What were the major goals of the Articles of Confederation? Were they achieved?

3. What constitutional principle was Oliver Ellsworth of Connecticut supporting when he stated, “An equality of voices was conformable to the federal principle and was necessary to secure the Small States against the large”? How did Congress settle the debate around this principle?

4. What did Anti-Federalist Brutus warn about in his first essay? Were the Anti-Federalist arguments effective?
The Framers had a “rich intellectual foundation” to draw from as they framed the new Constitution. List the three main influences with examples as discussed in the essay.

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<thead>
<tr>
<th>Person or Idea</th>
<th>Influences</th>
<th>Example</th>
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<tr>
<td>Classics and ancient history</td>
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<td>British Tradition</td>
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<td>Enlightenment</td>
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What was the author’s major justification for the failure of the Articles of Confederation?

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Define four of the main Founding principles the Constitutional Convention debated throughout the summer of 1787.

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<th>Principle</th>
<th>Definition</th>
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**Problem Solving Chart—Articles of Confederation**

**Directions**

During the 1780s, the newly founded federal government faced many problems that the Articles of Confederation could not handle. In the spaces below list the major problems the Congress under the Articles could not handle, and then suggest a possible solution.

<table>
<thead>
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<th>Problem</th>
<th>Possible Solution</th>
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Why was it necessary to hold a convention to discuss changes to the current form of government under the Articles of Confederation? Summarize the information from the above chart to answer this question with three to five full sentences.
The United States Constitution

Preamble
We the People of the United States, in Order to form a more perfect Union, establish justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I
Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the
next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the
emoluments whereof shall have been increased during such time: and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
To provide and maintain a navy;
To make rules for the government and regulation of the land and naval forces;
To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;
To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;--And
To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. 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.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto Law shall be passed.
No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.
No tax or duty shall be laid on articles exported from any state.
No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and
all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly,
until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4. The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article III

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made,
under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall

be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Article IV

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. New states may be admitted by the Congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. The United States shall guarantee to every state in this union a republican form
of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

**Article V**

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

**Article VI**

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

**Article VII**

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven and of the independence of the United States of America the twelfth. In witness whereof We have hereunto subscribed our Names,
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<th>State</th>
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<td>Virginia</td>
<td>G. Washington-Presidt. and deputy from</td>
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<tr>
<td>New Hampshire</td>
<td>John Langdon, Nicholas Gilman</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Nathaniel Gorham, Rufus King</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Wm: Saml. Johnson, Roger Sherman</td>
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<tr>
<td>New York</td>
<td>Alexander Hamilton</td>
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<tr>
<td>New Jersey</td>
<td>Wil: Livingston, David Brerly, Wm. Paterson,</td>
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<td>Jona: Dayton</td>
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<tr>
<td>Pennsylvania</td>
<td>B. Franklin, Thomas Mifflin, Robt. Morris,</td>
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<tr>
<td></td>
<td>Geo. Clymer, Thos. FitzSimons, Jared Ingersoll,</td>
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<td></td>
<td>James Wilson, Gouv Morris</td>
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<tr>
<td>Delaware</td>
<td>Geo: Read, Gunning Bedford jun, John Dickinson,</td>
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<td>Richard Bassett, Jaco: Broom</td>
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<td>Maryland</td>
<td>James McHenry, Dan of St Thos. Jenifer, Danl</td>
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<td></td>
<td>Carroll</td>
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<td>Virginia</td>
<td>John Blair--, James Madison Jr.</td>
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<td></td>
<td>Williamson</td>
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<tr>
<td>South Carolina</td>
<td>J. Rutledge, Charles Cotesworth Pinckney,</td>
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<td></td>
<td>Charles Pinckney, Pierce Butler</td>
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<tr>
<td>Georgia</td>
<td>William Few, Abr Baldwin</td>
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**Student Note Guide—Separation of Powers**

**Directions**

Using **Handout D: The United States Constitution** identify each of the three branches of government and at least three of their vested powers as directed by the Constitution.

<table>
<thead>
<tr>
<th>Branch</th>
<th>Location in the Constitution (Article and Section)</th>
<th>Vested Powers</th>
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</thead>
<tbody>
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<td>1.</td>
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<td>2.</td>
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<td>3.</td>
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</table>
“The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. Were the federal Constitution, therefore, really chargeable with the accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system.” (James Madison, *Federalist* No. 47, 1788)

What was Madison’s point of view on separation of powers?
Define checks and balances. Then list the ways in which each branch checks or balances the other branches in the chart below.

<table>
<thead>
<tr>
<th>Legislative Branch</th>
<th>Executive Branch</th>
<th>Judicial Branch</th>
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</thead>
<tbody>
<tr>
<td>Checks on Executive Branch:</td>
<td>Checks on Legislative Branch:</td>
<td>Checks on Executive Branch:</td>
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<td>2.</td>
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<td>Checks on Judicial Branch:</td>
<td>Checks on Judicial Branch:</td>
<td>Checks on Legislative Branch:</td>
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</table>
The idea that the intricate checks and balances of the new Constitution would protect liberty did not go unrefuted during the Constitutional Convention as well as during the ratification process. James Madison took charge of defending checks and balances. Answer the question below and then explain Madison’s defense of checks and balances based on the quotes.

The big question...

HOW DO YOU PREVENT TYRANNY UNDER THE NEW CONSTITUTION?

Answer:

“...the genius of the whole system; the nature of just and constitutional laws; and above all, the vigilant and manly spirit which actuates the people of America -- a spirit which nourishes freedom, and in return is nourished by it. If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature, as well as on the people, the people will be prepared to tolerate any thing but liberty.” (James Madison, Federalist No. 57, 1788)

“The great security against a gradual concentration of the several powers in the same [branch], consists in giving to those who administer each [branch], the necessary constitutional means, and personal motives, to resist encroachments of the others...Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place” (James Madison, Federalist No. 51, 1788).

In the space below explain Madison’s defense of checks and balances.
To what expedient then shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government, as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which, to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted, that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies, should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments, would be less difficult in practice, than it may in contemplation appear. Some difficulties, however, and some additional expense, would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle; first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other, would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who
administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man, must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, 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. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power; where the constant aim is, to divide and arrange the several offices in such a manner as that each may be a check on the other; that the private interest of every individual may be a centinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the state.

But it is not possible to give to each department an equal power of self-defence. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is, to divide the legislature into different branches; and to render them, by different modes of election, and different principles of action, as little connected with each other, as the nature of their common functions, and their common dependence on the society, will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature, appears, at first view, to be the natural defence with which the executive magistrate should be armed. But perhaps it would be neither altogether safe, nor alone sufficient. On ordinary occasions, it might not be exerted with the requisite firmness; and on extraordinary occasions, it might be perfidiously abused. May not this defect of an absolute negative be supplied by some qualified connexion between this weaker department, and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department? ...
The Alleged Tendency Of The New Plan To Elevate The Few At The Expense Of The Many Considered In Connection With Representation

Tuesday, February 19, 1788

[James Madison]

THE third charge against the House of Representatives is that it will be taken from that class of citizens which will have least sympathy with the mass of the people, and be most likely to aim at an ambitious sacrifice of the many to the aggrandizement of the few.

Of all the objections which have been framed against the federal Constitution, this is perhaps the most extraordinary. Whilst the objection itself is leveled against a pretended oligarchy, the principle of it strikes at the very root of republican government.

The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society, and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust. The elective mode of obtaining rulers is the characteristic policy of republican government. The means relied on in this form of government for preventing their degeneracy are numerous and various. The most effectual one is such a limitation of the term of appointments as will maintain a proper responsibility to the people.

Let me now ask what circumstance there is in the constitution of the House of Representatives that violates the principles of republican government, or favors the elevation of the few on the ruins of the many? Let me ask whether every circumstance is not, on the contrary, strictly conformable to these principles, and scrupulously impartial to the rights and pretensions of every class and description of citizens?

Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States. They are to be the same who exercise the right in every State of electing the corresponding branch of the legislature of the State.

Who are to be the objects of popular choice? Every citizen whose merit may recommend him to the esteem and confidence of his country. No qualification of wealth, of birth, of religious faith, or of civil profession is permitted to fetter the judgement or disappoint the inclination of the people.

If we consider the situation of the men on whom the free suffrages of their fellow-citizens may confer the representative trust, we shall find it involving every security which can be devised or desired for their fidelity to their constituents.

In the first place, as they will have been distinguished by the preference of their fellow-citizens, we are to presume that in general they...
will be somewhat distinguished also by those qualities which entitle them to it, and which promise a sincere and scrupulous regard to the nature of their engagements.

In the second place, they will enter into the public service under circumstances which cannot fail to produce a temporary affection at least to their constituents. There is in every breast a sensibility to marks of honor, of favor, of esteem, and of confidence, which, apart from all considerations of interest, is some pledge for grateful and benevolent returns. Ingratitude is a common topic of declamation against human nature; and it must be confessed that instances of it are but too frequent and flagrant, both in public and in private life. But the universal and extreme indignation which it inspires is itself a proof of the energy and prevalence of the contrary sentiment.

In the third place, those ties which bind the representative to his constituents are strengthened by motives of a more selfish nature. His pride and vanity attach him to a form of government which favors his pretensions and gives him a share in its honors and distinctions. Whatever hopes or projects might be entertained by a few aspiring characters, it must generally happen that a great proportion of the men deriving their advancement from their influence with the people would have more to hope from a preservation of the favor than from innovations in the government subversive of the authority of the people.

All these securities, however, would be found very insufficient without the restraint of frequent elections. Hence, in the fourth place, the House of Representatives is so constituted as to support in the members an habitual recollection of their dependence on the people.

Before the sentiments impressed on their minds by the mode of their elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the level from which they were raised; there forever to remain unless a faithful discharge of their trust shall have established their title to a renewal of it.

I will add, as a fifth circumstance in the situation of the House of Representatives, restraining them from oppressive measures, that they can make no law which will not have its full operation on themselves and their friends, as well as on the great mass of the society. This has always been deemed one of the strongest bonds by which human policy can connect the rulers and the people together. It creates between them that communion of interests and sympathy of sentiments of which few governments have furnished examples; but without which every government degenerates into tyranny. If it be asked, what is to restrain the House of Representatives from making legal discriminations in favor of themselves and a particular class of the society? I answer: the genius of the whole system; the nature of just and constitutional laws; and, above all, the vigilant and manly spirit which actuates the people of America—a spirit which nourishes freedom, and in return is nourished by it.

If this spirit shall ever be so far debased as to tolerate a law not obligatory on the legislature, as well as on the people, the people will be prepared to tolerate anything but liberty.

Such will be the relation between the House of Representatives and their constituents. Duty, gratitude, interest, ambition itself, are the cords by which they will be bound to fidelity and
sympathy with the great mass of the people. It is possible that these may all be insufficient to control the caprice and wickedness of men. But are they not all that government will admit, and that human prudence can devise? Are they not the genuine and the characteristic means by which republican government provides for the liberty and happiness of the people? Are they not the identical means on which every State government in the Union relies for the attainment of these important ends? What, then, are we to understand by the objection which this paper has combated? What are we to say to the men who profess the most flaming zeal for republican government, yet boldly impeach the principle of it; who pretend to be champions for the right and the capacity of the people to choose their own rulers, yet maintain that they will prefer those only who will immediately and infallibly betray the trust committed to them? ...