Founding Principles Module: Separation of Powers and Checks and Balances Introduction

Separation of Powers is a system of distinct powers built into the Constitution to prevent an accumulation of power in one branch.

Lesson One: Why Does Our Government Have Separated Powers?

Overview
The United States Constitution separates the powers of government into three branches – the legislative, the executive, and the judicial. This separation of responsibilities and authority was an idea conceived of by Montesquieu and was considered by the Founders as key to preventing tyranny.

Recommended Time:
135 minutes

Objectives
- Recognize the origins of the principle of separation of powers
- Analyze arguments for and against separation of powers.
- Analyze the checks each branch has on the other branches.
- Debate the merits of the different models of separation of powers.
- Evaluate the significance of the arguments in Federalist No. 51 regarding separation of powers.

North Carolina Clarifying Objectives
- CE.C&G.1.2: Explain how the Enlightenment and other contributing theories impacted the writing of the Declaration of Independence, the US Constitution and the Bill of Rights to help promote liberty, justice and equality (e.g., natural rights, classical theories of government, Magna Carta, Montesquieu, Locke, English Bill of Rights, etc.).
- CE.C&G.1.3: Evaluate how debates on power and authority between Federalists and Anti-Federalists have helped shape government in the United States over time (e.g., Hamilton, Jefferson, Madison, Federalist Papers, strong central government, protection of individual rights, Elastic Clause, Bill of Rights, etc.).
- CE.C&G.1.4: Analyze the principles and ideals underlying American democracy in terms of how they promote freedom (e.g., separation of powers, rule of law, limited government, democracy, consent of the governed, individual rights –life, liberty, pursuit of happiness, self-government, representative democracy, equal opportunity, equal protection under the law, diversity, patriotism, etc.).
**Lesson Two: Federalist No. 52, Separation of Powers, and Checks and Balances**

**Overview**

The United States Constitution divides the national government power into three branches. Each branch has specific powers enumerated in the document, but the powers are checked by the other branches.

**Recommended Time**

90 minutes

**Objectives**

- Examine the powers of each of the three branches of government.
- Understand how the powers of each branch are checked by the other branches.
- Understand the significance of *Federalist No. 52*
- Evaluate the principle of separation of powers in light of current events
- Develop a perspective on constitutional principles and current events

**North Carolina Standards and Objectives**

- **CE.C&G.1.1:** Explain how the tensions over power and authority led America’s founding fathers to develop a constitutional democracy (e.g., mercantilism, salutary neglect, taxation and representation, boycott and protest, independence, American Revolution, Articles of Confederation, Ben Franklin, George Washington, John Adams, Sons of Liberty, etc.).
- **CE.C&G.1.2:** Explain how the Enlightenment and other contributing theories impacted the writing of the Declaration of Independence, the US Constitution and the Bill of Rights to help promote liberty, justice and equality (e.g., natural rights, classical theories of government, Magna Carta, Montesquieu, Locke, English Bill of Rights, etc.).

- **CE.C&G.1.3:** Evaluate how debates on power and authority between Federalists and Anti-Federalists have helped shape government in the United States over time (e.g., Hamilton, Jefferson, Madison, Federalist Papers, strong central government, protection of individual rights, Elastic Clause, Bill of Rights, etc.).

- **CE.C&G.1.4:** Analyze the principles and ideals underlying American democracy in terms of how they promote freedom (e.g., separation of powers, rule of law, limited government, democracy, consent of the governed, individual rights –life, liberty, pursuit of happiness, self-government, representative democracy, equal opportunity, equal protection under the law, diversity, patriotism, etc.).

- **CE.C&G.2.1:** Analyze the structures of national, state and local governments in terms of ways they are organized to maintain order, security, welfare of the public and the protection of citizens (e.g., federalism, the three branches, court system, jurisdictions, judicial process, agencies, etc.).

- **AH1.H.1.3:** Use Historical Analysis and Interpretation to:
  - Identify issues and problems in the past.
  - Consider multiple perspectives of various peoples in the past.

- **AH1.H.1.4:** Use Historical Research to:
  - Formulate historical questions.
  - Obtain historical data from a variety of sources.
  - Support interpretations with historical evidence.
  - Construct analytical essays using historical evidence to support arguments.

- **AH1.H.2.1:** Analyze key political, economic, and social turning points from colonization through Reconstruction in terms of causes and effects (e.g., conflicts, legislation, elections, innovations, leadership, movements, Supreme Court decisions, etc.).

- **AH1.H.2.2:** Evaluate key turning points from colonization through Reconstruction in terms of their lasting impact (e.g., conflicts, legislation, elections, innovations, leadership, movements, Supreme Court decisions, etc.).

### Assessment

### Overview

Students will compare and contrast the United States model of Separation of Powers with that employed by Parliamentary systems, typified by England. Students will see how the principle of separation of powers is expressed in a different way in the Parliamentary system, and will appraise what this difference means about the principle.
Recommended Time
60 minutes

Assignment

- “A representative owes the People not only his industry, but his judgment, and he betrays them if he sacrifices it to their opinion.” - Edmund Burke

- The Founders saw separation of powers as crucial to the success of a democratic system. Since the time of the Founders other representative governments have emerged that have a different view of separation of powers. The most prominent example of this different approach is the United Kingdom. Termed by political scientists the Westminster system, it's a democratic parliamentary system that operates on the principle of fusion of power. The executive (Prime Minister) comes from the ruling legislative party, and has wide ranging authority to appoint any number of government officials. Students should write an essay answering the questions below:

  - Explain in your own words the differences between separation of powers and fusion of powers.

  - Proponents of a fusion of power maintain that this approach enables the government to be more responsive to the needs of the citizenry, as government can act quicker if the legislature and executive are united. Do you think this is true? Drawing from what you've learned from this module, how do you think the Founders would respond?

Answer Key for Assessment

- Differences between separation of powers and fusion of powers: Students’ answers should address both the American and Westminster systems of separation of powers.

  - The American system separates powers in the three branches by enumerating each branches’ power in the Constitution. According to the Constitution, the legislative branch, separated into the House of Representative and the Senate, has the sole power to legislate of pass laws, the executive branch has the sole power to execute or carry out laws, and the judicial branch has the sole power to decide on cases arising under the Constitution between states, between states and citizens of other states, and between states and foreign nations or citizens. Each branches’ powers are checked by the other branches. For instance, the executive can only appoint officers, including Supreme Court justices and other judges, with the advice and consent of the Senate. The executive may veto laws passed by the legislature, and the legislature may impeach the executive or justices.

  - The Westminster system also separates powers into three branches, but there is more overlap between the branches. The legislature is the Parliament, separated into the House of Commons and the House of Lords, and is headed by the Prime Minister.
The Prime Minister is the traditionally the leader of the majority party in the House of Commons, and, unlike the American system, he or she is also a member of the executive branch. The Parliament may pass laws, which are known as primary legislation. Along with the Prime Minister, members of the Cabinet and other officers make up the executive branch. The executive may pass laws, which are known as secondary legislation. In 2009, the Supreme Court of the United Kingdom was established and took over judicial proceedings from the Law Lords (judges from the House of Lords) and the Judicial Committee of the Privy Council. The Supreme Court hears appeals from England, Wales, Northern Ireland, and Scotland. The Supreme Court’s power of judicial review is limited. It cannot overturn primary legislation, but it can overturn secondary legislation or declare a law incompatible with the Human Rights Act of 1998. Justices of the Supreme Court are appointed by a selection commission and can be removed from office by Parliament. The monarch in the United Kingdom has mostly ceremonial and diplomatic roles as the head of state. The monarch has what is known as royal prerogative. Some of the powers include approving laws, appointing officers, granting pardons, declaring war, and acting as commander in chief of the armed forces. Today, these powers are limited as the monarch must accept the decisions of the Prime Minister.

- Fusion of power opinion: Accept reasoned answers based on both models of separation of powers.

Overview
The United States Constitution separates the powers of government into three branches – the legislative, the executive, and the judicial. This separation of responsibilities and authority was an idea conceived of by Montesquieu and was considered by the Founders as key to preventing tyranny.

Recommended Time:
135 minutes

Materials
Handout A: Separation of Powers Reading
Handout B: Federalist No. 51, Excerpt
Handout C: Constitutional Principle: Separation of Powers Viewing Guide

North Carolina Clarifying Objectives
- CE.C&G.1.2: Explain how the Enlightenment and other contributing theories impacted the writing of the Declaration of Independence, the US Constitution and the Bill of Rights to help promote liberty, justice and equality (e.g., natural rights, classical theories of government, Magna Carta, Montesquieu, Locke, English Bill of Rights, etc.).
- CE.C&G.1.3: Evaluate how debates on power and authority between Federalists and Anti-Federalists have helped shape government in the United States over time (e.g., Hamilton, Jefferson, Madison, Federalist Papers, strong central government, protection of individual rights, Elastic Clause, Bill of Rights, etc.).
- CE.C&G.1.4: Analyze the principles and ideals underlying American democracy in terms of how they promote freedom (e.g., separation of powers, rule of law, limited government, democracy, consent of the governed, individual rights –life, liberty, pursuit of happiness, self-government, representative democracy, equal opportunity, equal protection under the law, diversity, patriotism, etc.).
- CE.C&G.2.5: Compare United States system of government within the framework of the federal and state structures as well as in how they relate with governmental systems of other nations (e.g., Republicanism, federalism).
- AH1.H.1.3: Use Historical Analysis and Interpretation to: 1. Identify issues and problems in the past. 2. Consider multiple perspectives of various peoples in the past. 3. Analyze cause-and-effect relationships and multiple causation. 4. Evaluate competing historical narratives and debates among historians. 5. Evaluate the influence of the past on contemporary issues.
- AH1.H.1.4: Use Historical Research to: 1. Formulate historical questions. 2. Obtain historical data from a variety of sources.

- **AH1.H.2.1**: Analyze key political, economic, and social turning points from colonization through Reconstruction in terms of causes and effects (e.g., conflicts, legislation, elections, innovations, leadership, movements, Supreme Court decisions, etc.).

- **AH1.H.2.2**: Evaluate key turning points from colonization through Reconstruction in terms of their lasting impact (e.g., conflicts, legislation, elections, innovations, leadership, movements, Supreme Court decisions, etc.).

**Lesson Plan**

**Warm-up [15 minutes]**

A. Write on the board the three different branches of government.

B. Ask students to brainstorm ways that one branch can check the actions of another branch. For instance the Supreme Court can rule a law unconstitutional, checking the power of the legislature.

C. Record on a separate sheet of paper all the different ways one branch of government can influence and limit the other branches of government. Save the sheet, as we’ll revisit it later.

**Reading and Discussion [45 minutes]**

A. Distribute Handout A: Separation of Powers and have students read it individually.

B. Conduct a group discussion about the key points from the reading. Focus on how the Madisonian Model differs from Montesquieu’s vision and how the implementation of separation of powers differed from the theoretical ideal. Potential discussion prompts include:

a. Evaluate the lasting significance of the adoption of Madison’s model. Do you think it has worked better than the pure Montesquieu model?

b. Do you agree with Madison that ambition is deeply rooted in human nature? Is there a better way to filter out those who are only motivated by ambition? Should we try and avoid having ambitious people occupy national office?

c. Some allege that the office of the President has accumulated a great deal of power, to such an extent it has thrown out of balance the Madisonian model. Do you agree?

**Activity I [30 minutes]**

1. Copy and distribute and use a projector to show the following quotation, also on **Handout B: Federalist No. 51, Excerpt**. Read it aloud and clarify any questions students have.

   “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.” – James Madison, Federalist No. 51, 1787

[Vocabulary notes: Oblige: Require; Auxiliary: Supplemental, providing additional help]

2. Have students write a one-page journal in response to the quotation. They should address the following questions:

a. Madison says government is a reflection on human nature. What can you tell about Madison’s understanding of what that human nature is?

b. What does Madison say is the primary [first, most important] way to control government? What are the “auxiliary precautions” he says are needed?

c. Madison does not say ambition is bad; he says it must be counteracted. Is this an important difference? Why or why not?

Activity II [30 minutes]


B. Point out to students that numbers 6 and 7 on Handout C: Viewing Guide for Constitutional Principle Video: Separation of Powers are loose paraphrases of Madison’s ideas.

Wrap-up [15 minutes]

A. Conduct a large group discussion to answer the question: Were the Founders wise to divide power? Why or why not?

B. Students should assess their progression in their journals, connecting what they’ve learned about the principle of Separation of Powers to their final project (from the Introductory Lesson). How, if at all, would separation of powers guard against the kinds of things that happened to Paul Chambers happening in the U.S.?
Separation of Powers with Checks and Balances

“The accumulation of all powers, legislative, executive and judicia[ll] 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.” - James Madison, 1788

The Founding Fathers were well-acquainted with a long-held tenet of government: the accumulation of power by a single person or body of government is the greatest threat to liberty. A celebrated feature of the Constitution, the separation of powers doctrine, in fact developed over the course of many centuries.

As early as 350 B.C., Greek philosopher Aristotle observed in Politics that every government, no matter its form, performed three distinct functions: “the deliberative, the magisterial, and the judicative.” In modern terminology these activities correlate, respectively, to the legislative (law-making), executive (law-enforcing) and judicial (law interpretation/application) functions of government. While Aristotle identified these basic powers common to all governments, he did not necessarily suggest that they should be exercised by entirely different branches.

The principle that major governmental functions should be divided into different branches would be advanced centuries later. The French philosopher Baron de Montesquieu, “[t]he oracle…the celebrated Montesquieu,” as James Madison referred to him, advocated three distinct and separate branches in which the general powers of government should be lodged. While John Locke made the case for separating the legislative and executive powers, Montesquieu provided the Founders with a convincing defense for an independent judiciary:

“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty… Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end to everything, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.”

It was Montesquieu’s vision of a truly separated, tripartite system that the Founding Fathers would come to adopt at the Constitutional Convention. Article I, Section 1 of the United States Constitution vests legislative powers in a Congress of the United States, itself separated into a House of Representatives and a Senate. Article II, Section 1 vests executive authority in a President of the United States. Article III,
Section 1 vests judicial authority in a single Supreme Court of the United States and “in such inferior Courts as the Congress may from time to time ordain and establish.”

During the ratification debates from 1787 to 1788, some critics charged that upon close inspection the separation of powers in Articles I, II, and III of the Constitution were not as complete as Montesquieu appeared to advocate and would tend toward an accumulation of power in one branch or another over time. The president, for example, has the power to accept or reject a bill duly passed by Congress, a seemingly legislative power. For its part, the Senate may approve or reject a presidential appointment to his own branch, a seemingly executive power.

The Constitution’s critics were right; the Framers did not propose a “pure” separation of powers. In Federalist No. 47 (1788) Madison retorted that a “pure” separation of powers was neither what Montesquieu intended nor practical:

“[Montesquieu] did not mean that these [branches] ought to have no partial agency in, or no control over, the acts of each other. His meaning…can amount to no more than this, that where the whole power of one [branch] is exercised by the hands that hold the whole power of another, the fundamental principles of a free constitution are subverted. [T]here is not a single instance in which the several [branches] of power have been kept absolutely separate and distinct.”

Implicit in Madison’s argument was an interesting challenge to the very doctrine of separation of powers: what will prevent the accumulation of power in the absence of pure separation? The answer was to be found in a unique feature of the Constitution: the pairing of separated powers with an intricate system of checks and balances designed to give each branch fortifications against encroachments by the others. The “Madisonian Model,” as it is now generally called, gave genuine and practical life to both the observation of Aristotle and the vision of Montesquieu. At the heart of the Madisonian Model is ambition. A desire for power, influence, and authority is embedded deeply in human nature. For many people, the very word “ambition” smacks of greed, corruption, or a win-at-all-cost mentality.

Madison saw it differently. Ambition, if properly harnessed by good judgment and rooted in an appreciation for the benefits of constitutional republicanism, could work to advance the public good. It could be beneficial not only to the effective separation of powers but to limited government and liberty itself. In Federalist No. 51, James Madison stated:

“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.”

In our system of separated powers, each branch of government is not only given a finite amount of power and authority but arrives at it through entirely different modes of election.
Madison theorized that as it is the Constitution that grants each branch its power, honorable ambition that ultimately serves the highest interests of the people could work to maintain the separation. In other words, since Congress is not dependent on the presidency or the courts for either its authority or its election to office, members will jealously guard its power from encroachments by the other two branches and vice versa.

What does Madison’s theory look like in practice? While it is the legislative branch that makes law, the president may check Congress by vetoing bills Congress has passed, preventing them from being enacted. In turn, Congress may enact a law over the president’s objection by overriding his veto with a vote of two-thirds of both the House and Senate. The Supreme Court can then check both branches by declaring a law unconstitutional (known as judicial review), but the Supreme Court itself is checked by virtue of the fact the president and Senate appoint and approve, respectively, members of the Court. Furthermore, both the president and federal judges are subject to impeachment by Congress for “treason, bribery, or other high crimes and misdemeanors.” (Article II, Sec. 4)

While Madison’s model remains, by and large, constitutionally intact, many people wonder if our system still balances power, in reality and in practice, to the extent that he envisioned. Our checks and balances system reflects an understanding about republican government, held by many Founders, that the legislative branch should be the superior branch and, therefore, most in need of restraint. They reasoned that this is the case because “We the People” govern ourselves through the laws we give ourselves through our elected representatives in the legislative branch.

“The legislative [branch] derives superiority…[i]ts constitutional powers [are] more extensive, and less susceptible to precise limits…[it] is not possible to give each [branch] an equal [number of checks on the other branches]” (Federalist No. 48). Some observers maintain that this conception of the legislative as the predominant branch is obsolete in modern times. The executive and judicial branches have expanded their powers beyond the Founders’ expectations over time (i.e. executive orders, the role of the Supreme Court as the arbiter of laws at every level, not just the federal level.) Is Madison’s assumption of legislative superiority true today? If you were asked to pick a branch to describe as “most powerful” would your answer mirror Madison’s?

Despite disagreement as to how well it has worked, one characteristic of the checks and balances system cannot be denied: it encourages constant tension and conflict between the branches. That conflict, however, is frequently beneficial, and our Constitution smiles upon it.
Directions: Read the following excerpt from Federalist No. 51. What is James Madison’s main point? Double-underline his culminating idea in this paragraph, and single-underline the points he makes to build up to it. Then write a brief summary of his main point on the lines below.

“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.”
– James Madison, Federalist No. 51, 1787

Vocabulary:
Oblige: Require
Auxiliary: Supplemental, providing additional help
Directions: Complete the first section while you watch the video. Then read the questions that follow. Watch the video a second time if needed, and then answer the questions.

While You Watch:

1. Why did the Framers of the Constitution separate power into three branches?
2. What are the general powers of the legislative branch?
3. What are the general powers of the executive branch?
4. What are the general powers of the judicial branch?
5. Which branch did the Framers believe should be the most powerful?
6. In *Federalist* 51, James Madison wrote about the need to enable government to control the governed, as well as for government to control itself. What did he mean by that statement?

After you watch:

1. What does the principle of separation of powers mean?
2. The video begins with Professor Muñoz’s statement that the purpose of separation of powers is to “frustrate” government action. What does he mean by this statement?
3. Why would the Founders have wanted to frustrate government action? Are those reasons still important today?
4. How is James Madison’s plan for “ambition to counteract ambition” reflected in our system of separated powers?
5. What does our system of separated powers with checks and balances reveal about the Founders’ understanding of human nature?

Extended Reflection:

1. In your journal – or in a separate document – write a one-page essay responding to the Founder’s decision to make the legislature the most powerful branch of government. Was this a good decision? In public opinion polls Congress is routinely rated as the worst branch of government. Does this change your opinion?
Separation of Powers Module: Federalist No. 52, Separation of Powers, and Checks and Balances Lesson

Overview
The United States Constitution divides the national government power into three branches. Each branch has specific powers enumerated in the document, but the powers are checked by the other branches.

Recommended Time
90 minutes

Objectives
Students will:

• Examine the powers of each of the three branches of government.
• Understand how the powers of each branch are checked by the other branches.
• Compare and contrast understandings of Constitutional separation of powers according to Federalist No. 52 and Centinel No. 1.
• Evaluate the principle of separation of powers in light of current events
• Develop a perspective on constitutional principles and current events

Materials
Handout A: The United States Constitution
Handout B: Separation of Powers and Checks and Balances in the Constitution Organizer
Handout C: Federalist No. 52
Handout D: Centinel No. 1

North Carolina Standards and Objectives
- CE.C&G.1.1: Explain how the tensions over power and authority led America’s founding fathers to develop a constitutional democracy (e.g., mercantilism, salutary neglect, taxation and representation, boycott and protest, independence, American Revolution, Articles of Confederation, Ben Franklin, George Washington, John Adams, Sons of Liberty, etc.).
- CE.C&G.1.2: Explain how the Enlightenment and other contributing theories impacted the writing of the Declaration of Independence, the US Constitution and the Bill of Rights to help promote liberty, justice and equality (e.g., natural rights, classical theories of government, Magna Carta, Montesquieu, Locke, English Bill of Rights, etc.).
- CE.C&G.1.3: Evaluate how debates on power and authority between Federalists and Anti-Federalists have helped shape government in the United States over time (e.g., Hamilton, Jefferson, Madison, Federalist Papers, strong central government, protection of individual rights, Elastic Clause, Bill of Rights, etc.).
CE.C&G.1.4: Analyze the principles and ideals underlying American democracy in terms of how they promote freedom (e.g., separation of powers, rule of law, limited government, democracy, consent of the governed, individual rights – life, liberty, pursuit of happiness, self-government, representative democracy, equal opportunity, equal protection under the law, diversity, patriotism, etc.).

CE.C&G.2.1: Analyze the structures of national, state and local governments in terms of ways they are organized to maintain order, security, welfare of the public and the protection of citizens (e.g., federalism, the three branches, court system, jurisdictions, judicial process, agencies, etc.).

AH1.H.1.3: Use Historical Analysis and Interpretation to:
- Identify issues and problems in the past.
- Consider multiple perspectives of various peoples in the past.
- Analyze cause-and-effect relationships and multiple causation.
- Evaluate competing historical narratives and debates among historians.
- Evaluate the influence of the past on contemporary issues.

AH1.H.1.4: Use Historical Research to:
- Formulate historical questions.
- Obtain historical data from a variety of sources.
- Support interpretations with historical evidence.
- Construct analytical essays using historical evidence to support arguments.

AH1.H.2.1: Analyze key political, economic, and social turning points from colonization through Reconstruction in terms of causes and effects (e.g., conflicts, legislation, elections, innovations, leadership, movements, Supreme Court decisions, etc.).

AH1.H.2.2: Evaluate key turning points from colonization through Reconstruction in terms of their lasting impact (e.g., conflicts, legislation, elections, innovations, leadership, movements, Supreme Court decisions, etc.).

Materials
Handout A: The United States Constitution.
Handout B: Separation of Powers and Checks and Balances in the Constitution Organizer.
Handout C: Federalist No. 52.
Handout D: Centinel No. 1.

Lesson Plan
Warm-Up [20 minutes]
A. Have students skim Handout A: The United States Constitution. They should highlight or underline the ways that the government power is separated among the branches and how power is checked by each branch as they read.

B. After reading, students should complete Handout B: Separation of Powers and Checks and Balances in the Constitution Organizer using their knowledge of the Constitution to determine the main powers of their branch and how that branch is checked or balanced by the other branches.

C. Discuss the students’ findings as a whole class.
Activity [60 minutes]
A. Have students read Handout C: Federalist No. 52 and Handout D: Centinel No. 1. They should compare and contrast the Federalist and Anti-Federalist views regarding separation of powers and address the questions that follow the readings in a journal entry.

Wrap-Up [10 minutes]
A. Hold a class discussion to examine the differences between Federalist No. 52 and Centinel No. 1. Ask students to justify their answers with quotes from the text.

Homework/Extension Options
A. Have each student find a news story reflecting a constitutional principle and write one paragraph analyzing how it relates to that principle and, specifically, Articles I-VII of the Constitution. Have students find their article from Teaching with Current Events at www.BillofRightsInstitute.org.

B. Have students find a newspaper editorial or letter to the editor in which the writer claims that a branch of government has exceeded its power under the Constitution. Have students consult the Constitution and write one paragraph explaining whether they believe the author of the editorial/letter is correct.
Handout A: 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,

G. Washington-Presidt. and deputy from Virginia
New Hampshire: John Langdon, Nicholas Gilman
Massachusetts: Nathaniel Gorham, Rufus King
Connecticut: Wm: Saml. Johnson, Roger Sherman
New York: Alexander Hamilton
New Jersey: Wil: Livingston, David Brearly, Wm. Paterson, Jona: Dayton
Delaware: Geo: Read, Gunning Bedford jun, John Dickinson, Richard Bassett, Jaco: Broom
Maryland: James McHenry, Dan of St Thos. Jenifer, Danl Carroll
Virginia: John Blair—, James Madison Jr.
South Carolina: J. Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler
Georgia: William Few, Abr Baldwin
Handout B: Separation of Powers and Checks and Balances in the Constitution Organizer

**Directions:** Using your copy of the Constitution, complete the chart below to list the powers of each branch of government and how each branch is checked by the other branches.

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<th>Legislative Branch</th>
<th>Executive Branch</th>
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<td><strong>Checks and Balances</strong></td>
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Directions: Read Federalist No. 52 and Brutus No. 16. In your journal, compare and contrast the Federalist and Anti-Federalist views on separation of powers. Use the questions to consider at the end of each document to guide your journal entry.

To the People of the State of New York:
FROM the more general inquiries pursued in the four last papers, I pass on to a more particular examination of the several parts of the government. I shall begin with the House of Representatives.

The first view to be taken of this part of the government relates to the qualifications of the electors and the elected. Those of the former are to be the same with those of the electors of the most numerous branch of the State legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the federal government which ought to be dependent on the people alone. To have reduced the different qualifications in the different States to one uniform rule, would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention. The provision made by the convention appears, therefore, to be the best that lay within their option. It must be satisfactory to every State, because it is conformable to the standard already established, or which may be established, by the State itself. It will be safe to the United States, because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitutions in such a manner as to abridge the rights secured to them by the federal Constitution.

The qualifications of the elected, being less carefully and properly defined by the State constitutions, and being at the same time more susceptible of uniformity, have been very properly considered and regulated by the convention. A representative of the United States must be of the age of twenty-five years; must have been seven years a citizen of the United States; must, at the time of his election, be an inhabitant of the State he is to represent; and, during the time of his service, must be in no office under the United States. Under these reasonable limitations, the door of this part of the federal government is open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession of religious faith.

The term for which the representatives are to be elected falls under a second view which may
be taken of this branch. In order to decide on the propriety of this article, two questions must be considered: first, whether biennial elections will, in this case, be safe; secondly, whether they be necessary or useful.

First. As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration should have an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured. But what particular degree of frequency may be absolutely necessary for the purpose, does not appear to be susceptible of any precise calculation, and must depend on a variety of circumstances with which it may be connected. Let us consult experience, the guide that ought always to be followed whenever it can be found.

The scheme of representation, as a substitute for a meeting of the citizens in person, being at most but very imperfectly known to ancient polity, it is in more modern times only that we are to expect instructive examples. And even here, in order to avoid a research too vague and diffusive, it will be proper to confine ourselves to the few examples which are best known, and which bear the greatest analogy to our particular case. The first to which this character ought to be applied, is the House of Commons in Great Britain. The history of this branch of the English Constitution, anterior to the date of Magna Charta, is too obscure to yield instruction. The very existence of it has been made a question among political antiquaries. The earliest records of subsequent date prove that parliaments were to sit only every year; not that they were to be elected every year. And even these annual sessions were left so much at the discretion of the monarch, that, under various pretexts, very long and dangerous intermissions were often contrived by royal ambition. To remedy this grievance, it was provided by a statute in the reign of Charles II., that the intermissions should not be protracted beyond a period of three years. On the accession of William III., when a revolution took place in the government, the subject was still more seriously resumed, and it was declared to be among the fundamental rights of the people that parliaments ought to be held frequently. By another statute, which passed a few years later in the same reign, the term “frequently,” which had alluded to the triennial period settled in the time of Charles II., is reduced to a precise meaning, it being expressly enacted that a new parliament shall be called within three years after the termination of the former. The last change, from three to seven years, is well known to have been introduced pretty early in the present century, under on alarm for the Hanoverian succession. From these facts it appears that the greatest frequency of elections which has been deemed necessary in that kingdom, for binding the representatives to their constituents, does not exceed a triennial return of them. And if we may argue from the degree of liberty retained even under septennial elections, and all the other vicious ingredients in the parliamentary constitution, we cannot doubt that a reduction of the period from seven to three years, with the other necessary reforms, would so far extend the influence of the people over their representatives as to satisfy us that biennial elections, under the federal system, cannot possibly be dangerous
to the requisite dependence of the House of Representatives on their constituents.

Elections in Ireland, till of late, were regulated entirely by the discretion of the crown, and were seldom repeated, except on the accession of a new prince, or some other contingent event. The parliament which commenced with George II. was continued throughout his whole reign, a period of about thirty-five years. The only dependence of the representatives on the people consisted in the right of the latter to supply occasional vacancies by the election of new members, and in the chance of some event which might produce a general new election. The ability also of the Irish parliament to maintain the rights of their constituents, so far as the disposition might exist, was extremely shackled by the control of the crown over the subjects of their deliberation. Of late these shackles, if I mistake not, have been broken; and octennial parliaments have besides been established. What effect may be produced by this partial reform, must be left to further experience. The example of Ireland, from this view of it, can throw but little light on the subject. As far as we can draw any conclusion from it, it must be that if the people of that country have been able under all these disadvantages to retain any liberty whatever, the advantage of biennial elections would secure to them every degree of liberty, which might depend on a due connection between their representatives and themselves.

Let us bring our inquiries nearer home. The example of these States, when British colonies, claims particular attention, at the same time that it is so well known as to require little to be said on it. The principle of representation, in one branch of the legislature at least, was established in all of them. But the periods of election were different. They varied from one to seven years. Have we any reason to infer, from the spirit and conduct of the representatives of the people, prior to the Revolution, that biennial elections would have been dangerous to the public liberties? The spirit which everywhere displayed itself at the commencement of the struggle, and which vanquished the obstacles to independence, is the best of proofs that a sufficient portion of liberty had been everywhere enjoyed to inspire both a sense of its worth and a zeal for its proper enlargement. This remark holds good, as well with regard to the then colonies whose elections were least frequent, as to those whose elections were most frequent. Virginia was the colony which stood first in resisting the parliamentary usurpations of Great Britain; it was the first also in espousing, by public act, the resolution of independence. In Virginia, nevertheless, if I have not been misinformed, elections under the former government were septennial. This particular example is brought into view, not as a proof of any peculiar merit, for the priority in those instances was probably accidental; and still less of any advantage in septennial elections, for when compared with a greater frequency they are inadmissible; but merely as a proof, and I conceive it to be a very substantial proof, that the liberties of the people can be in no danger from biennial elections.

The conclusion resulting from these examples will be not a little strengthened by recollecting three circumstances. The first is, that the federal legislature will possess a part only of that supreme legislative authority which is vested completely in the British Parliament; and which, with a few exceptions, was exercised by the
It is a received and well-founded maxim, that where no other circumstances affect the case, the greater the power is, the shorter ought to be its duration; and, conversely, the smaller the power, the more safely may its duration be protracted. In the second place, it has, on another occasion, been shown that the federal legislature will not only be restrained by its dependence on its people, as other legislative bodies are, but that it will be, moreover, watched and controlled by the several collateral legislatures, which other legislative bodies are not. And in the third place, no comparison can be made between the means that will be possessed by the more permanent branches of the federal government for seducing, if they should be disposed to seduce, the House of Representatives from their duty to the people, and the means of influence over the popular branch possessed by the other branches of the government above cited. With less power, therefore, to abuse, the federal representatives can be less tempted on one side, and will be doubly watched on the other.

PUBLIUS
October 5, 1787

To the Freemen of Pennsylvania.

Friends, Countrymen and Fellow Citizens,

The late convention have submitted to your consideration a plan of a new federal government — The subject is highly interesting to your future welfare — Whether it be calculated to promote the great ends of civil society, viz. the happiness and prosperity of the community; it behooves you well to consider, uninfluenced by the authority of names. Instead of that frenzy of enthusiasm, that has actuated the citizens of Philadelphia, in their approbation of the proposed plan, before it was possible that it could be the result of a rational investigation into its principles; it ought to be dispassionately and deliberately examined, and its own intrinsic merit the only criterion of your patronage. If ever free and unbiased discussion was proper or necessary, it is on such an occasion. — All the blessings of liberty and the dearest privileges of freemen, are now at stake and dependent on your present conduct. Those who are competent to the task of developing the principles of government, ought to be encouraged to come forward, and thereby the better enable the people to make a proper judgment; for the science of government is so abstruse, that few are able to judge for themselves: without such assistance the people are too apt to yield an implicit assent to the opinions of those characters, whose abilities are held in the highest esteem, and to those in whose integrity and patriotism they can confide: not considering that the love of domination is generally in proportion to talents, abilities, and superior acquirements; and that the men of the greatest purity of intention may be made instruments of despotism in the hands of the artful and designing. If it were not for the stability and attachment which time and habit gives to forms of government it would be in the power of the enlightened and aspiring few, if they should combine, at any time to destroy the best establishments, and even make the people the instruments of their own subjugation…

Suppose a government could be formed and supported on such principles, would it answer the great purposes of civil society; if the administrators of every government are actuated by views of private interest and ambition, how is the welfare and happiness of the community to be the result of such jarring adverse interests?

Therefore, as different orders in government will not produce the good of the whole, we must recur to other principles. I believe it will be found that the form of government, which holds those entrusted with power, in the greatest responsibility to their constituents, the best calculated for freemen. A republican, or free government, can only exist where the body of the people are virtuous, and where property is pretty equally divided; in such a government the people are the sovereign and their sense or opinion is the criterion of every public measure; for when this ceases to be the case, the nature of the government is changed, and an aristocracy, monarchy or despotism will rise on its ruin. The highest responsibility is to be attained, in a simple structure of
government, for the great body of the people never steadily attend to the operations of government, and for want of due information are liable to be imposed on — If you complicate the plan by various orders, the people will be perplexed and divided in their sentiments about the source of abuses or misconduct, some will impute it to the senate, others to the house of representatives, and so on, that the interposition of the people may be rendered imperfect or perhaps wholly abortive. But if, imitating the constitution of Pennsylvania, you vest all the legislative power in one body of men (separating the executive and judicial) elected for a short period, and necessarily excluded by rotation from permanency, and guarded from precipitancy and surprise by delays imposed on its proceedings, you will create the most perfect responsibility for then, whenever the people feel a grievance they cannot mistake the authors, and will apply the remedy with certainty and effect, discarding them at the next election. This tie of responsibility will obviate all the dangers apprehended from a single legislature, and will the best secure the rights of the people…

I shall previously consider the extent of the powers intended to be vested in Congress, before I examine the construction of the general government.

It will not be controverted that the legislative is the highest delegated power in government, and that all others are subordinate to it. The celebrated Montesquieu establishes it as a maxim, that legislation necessarily follows the power of taxation. By sect. 8, of the first article of the proposed plan of government, “the Congress are to 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.” Now what can be more comprehensive than these words; not content by other sections of this plan, to grant all the great executive powers of a confederation, and a STANDING ARMY IN TIME OF PEACE, that grand engine of oppression, and moreover the absolute control over the commerce of the United States and all external objects of revenue, such as unlimited imposts upon imports, etc. — they are to be vested with every species of internal taxation; — whatever taxes, duties and excises that they may deem requisite for the general welfare, may be imposed on the citizens of these states, levied by the officers of Congress, distributed through every district in America; and the collection would be enforced by the standing army, however grievous or improper they may be. The Congress may construe every purpose for which the state legislatures now lay taxes, to be for the general welfare, and thereby seize upon every object of revenue.

The judicial power by 1st sect. of article 3 “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.”

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The judicial power to be vested in one Supreme Court, and in such Inferior Courts as the Congress may from time to time ordain and establish.

The objects of jurisdiction recited above, are so numerous, and the shades of distinction between civil causes are oftentimes so slight, that it is more than probable that the state judicatories would be wholly superseded; for in contests about jurisdiction, the federal court, as the most powerful, would ever prevail...

To put the omnipotence of Congress over the state government and judicatories out of all doubt, the 6th article ordains that “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.”

By these sections the all-prevailing power of taxation, and such extensive legislative and judicial powers are vested in the general government, as must in their operation, necessarily absorb the state legislatures and judicatories; and that such was in the contemplation of the framers of it, will appear from the provision made for such event, in another part of it; (but that, fearful of alarming the people by so great an innovation, they have suffered the forms of the separate governments to remain, as a blind.) By sect. 4th of the 1st article, “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 place of choosing senators.” The plain construction of which is, that when the state legislatures drop out of sight, from the necessary operation this government, then Congress are to provide for the election and appointment of representatives and senators.

If the foregoing be a just comment — if the United States are to be melted down into one empire, it becomes you to consider, whether such a government, however constructed, would be eligible in so extended a territory; and whether it would be practicable, consistent with freedom? It is the opinion of the greatest writers, that a very extensive country cannot be governed on democratical principles, on any other plan, than a confederation of a number of small republics, possessing all the powers of internal government, but united in the management of their foreign and general concerns.

It would not be difficult to prove, that anything short of despotism, could not bind so great a country under one government; and that whatever plan you might, at the first setting out, establish, it would issue in a despotism.

If one general government could be instituted and maintained on principles of freedom, it would not be so competent to attend to the various local concerns and wants, of every particular district, as well as the peculiar governments, who are nearer the scene, and possessed of superior means of information, besides, if the business of the whole union is to be managed by one government, there would not be time. Do we not already see, that the inhabitants in a number of larger states, who are remote from the seat of government, are loudly complaining of the inconveniences and
disadvantages they are subjected to on this account, and that, to enjoy the comforts of local government, they are separating into smaller divisions.

Having taken a review of the powers, I shall now examine the construction of the proposed general government.

...The house of representatives, are on the part of the people to balance the senate, who I suppose will be composed of the better sort, the well born, etc. The number of the representatives (being only one for every 30,000 inhabitants) appears to be too few, either to communicate the requisite information, of the wants, local circumstances and sentiments of so extensive an empire, or to prevent corruption and undue influence, in the exercise of such great powers; the term for which they are to be chosen, too long to preserve a due dependence and accountability to their constituents; and the mode and places of their election not sufficiently ascertained, for as Congress have the control over both, they may govern the choice, by ordering the representatives of a whole state, to be elected in one place, and that too may be the most inconvenient.

The senate, the great efficient body in this plan of government, is constituted on the most unequal principles. The smallest state in the union has equal weight with the great states of Virginia Massachusetts, or Pennsylvania — The Senate, besides its legislative functions, has a very considerable share in the Executive; none of the principal appointments to office can be made without its advice and consent. The term and mode of its appointment, will lead to permanency; the members are chosen for six years, the mode is under the control of Congress, and as there is no exclusion by rotation, they may be continued for life, which, from their extensive means of influence, would follow of course. The President, who would be a mere pageant of state, unless he coincides with the views of the Senate, would either become the head of the aristocratic junta in that body, or its minion, besides, their influence being the most predominant, could the best secure his re-election to office. And from his power of granting pardons, he might skreen from punishment the most treasonable attempts on liberties of the people, when instigated by the Senate.

From this investigation into the organization of this government, it appears that it is devoid of all responsibility or accountability to the great body of the people, and that so far from being a regular balanced government, it would be in practice a permanent ARISTOCRACY.

The framers of it, actuated by the true spirit of such a government, which ever abominates and suppresses all free enquiry and discussion, have made no provision for the liberty of the press that grand palladium of freedom, and scourge of tyrants, but observed a total silence on that head. It is the opinion of some great writers, that if the liberty of the press, by an institution of religion, or otherwise, could be rendered sacred, even in Turkey, that despotism would fly before it. And it is worthy of remark, that there is no declaration of personal rights, premised in most free constitutions; and that trial by jury in civil cases is taken away; for what other construction can be put on the following, viz. Article m. Sect. 2d. “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 above mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact?” It would be a novelty in jurisprudence, as well as evidently improper to allow an appeal from the verdict of a jury, on the matter of fact; therefore, it implies and allows of a dismissal of the jury in civil cases, and especially when it is considered, that jury trial in criminal cases is expressly stipulated for, but not in civil cases.

But our situation is represented to be so critically dreadful that, however reprehensible and exceptionable the proposed plan of government may be, there is no alternative, between the adoption of it and absolute ruin. — My fellow citizens, things are not at that crisis, it is the argument of tyrants; the present distracted state of Europe secures us from injury on that quarter, and as to domestic dissensions, we have not so much to fear from them, as to precipitate us into this form of government, without it is a safe and a proper one. For remember, of all possible evils that of despotism is the worst and the most to be dreaded.

Besides, it cannot be supposed, that the first essay on so difficult a subject, is so well digested, as it ought to be, — if the proposed plan, after a mature deliberation, should meet the approbation of the respective States, the matter will end, but if it should be found to be fraught with dangers and inconveniencies, a future general Convention being in possession of the objections, will be the better enabled to plan a suitable government.

Who’s here so base, that would a bondsman be?
If any, speak; for him have I offended.
Who’s here so vile, that will not love his country?
If any, speak; for him have I offended.
[Julius Caesar, Act 3, Scene 2 ]

Questions to Consider
1. According to Publius, what are the reasons for structuring the legislative branch in the manner in which it is structured in the Constitution? According to Centinel, what problems are there with these structures?
2. Why are the terms and elections of the Members of Congress and Senators important to Publius and Centinel? How do their opinions compare?
3. What is the role of the legislative branch in checking and balancing other branches?
4. How does the system of separation of powers and checks and balances promote or not promote freedom in the United States according to the authors?
5. Based on your knowledge of history and current events, have these issues regarding separation of powers continued? Explain.
Lesson One: Why Does Our Government Have Separated Powers?


While You Watch:
1. The powers are separated so that one branch does not gain too much power and become tyrannical.
2. The legislative branch has the power to make laws.
3. The executive has the power to direct relationships with other nations and ensure that laws are executed.
4. The judicial branch has the power to try cases under Constitution
5. The Framers believed that the legislative branch should be the most powerful because it was the most directly represents the people.
6. Government needs to be able to have enough power to protect the rights of the people and make sure the people don’t infringe upon the rights of other people, but it also needs to make sure to control itself so that it doesn’t infringe on the rights of the people.

After you watch:
1. Separation of powers means that the national government’s powers are divided between the three branches, the legislative, executive, and judicial, so that no one branch can become too powerful.
2. In order to protect the rights of the people, one branch of government shouldn’t be able to have all of the power. Separation of powers makes sure that each branch has checks on the other branches to make sure one doesn’t overstep its powers.
3. The Founders wanted to frustrate government action because too much government power can endanger the rights of the people. Accept reasoned answers.
4. James Madison’s plan for “ambition to counteract ambition” is reflected in our system of separated powers because no one branch’s ambition can overstep its bounds. Each branch has its own powers and can check the powers and ambitions of the other branches.
5. The Founders understood that people were not perfect. They would not always choose the best leaders or make the best decisions. The best way to protect against infringement of the rights of the people in a government is to separate the government’s power and allow it to check itself.

Extended Reflection:
Accept reasoned answers.
**Lesson Two: Federalist No. 52, Separation of Powers, and Checks and Balances**

**Handout B: Separation of Powers and Checks and Balances in the Constitution Organizer**

|                  | Legislative Branch                                                                                                                                                                                                 | Executive Branch                                                                                                                                                                                                 | Judicial Branch                                                                                                                                                                                                 |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| **Powers**       | The House of Representatives and Senate have the power to lay and collect taxes, pay debts, provide for common defense and welfare, borrow money, regulate commerce, establish naturalization rules, coin money, fix weights and measures, provide for punishment of counterfeiters, establish post offices and post roads, secure rights to authors’ and inventors’ writings and discoveries, constitute tribunals inferior to Supreme Court, define and punish piracies, declare war, raise and support armies, provide and maintain a navy, make rules for regulating the land and naval forces, provide for calling forth the militia, provide for organizing, arming, and disciplining the militia, exercise exclusive legislation over the District, make laws necessary and proper to carrying these powers into execution, declare punishment of treason, propose amendments to the Constitution. | The president has the power to be commander in chief of the army, navy, and militia; grant pardons and reprieves; make treaties and appoint ambassadors, public officials, and judges with the advice and consent of the Senate; give Congress information of the state of the union; convene both Houses; adjourn both Houses, receive ambassadors; take care that the laws be faithfully executed; commission officers of the United States. | The power of the Supreme Court shall extend to all cases arising under the Constitution, the laws of the United States, treaties, admiralty and maritime jurisdiction, controversies in which the United States is a party, controversies between two or more states and between citizens of different states, between states or citizens and a foreign state or citizens, and appellate jurisdiction. |
| **Checks and Balances** | Senate must advise and consent to appointments made by the president, including Supreme Court justices, Senate must advise and consent to treaties made by the president, Senate will try all impeachments and can convict with a two-thirds majority of those present, Congress can override a president’s veto. | The president can veto or sign legislation passed by legislature, execute legislation passed by legislature, appoint Supreme Court justices (with the advice and consent of the Senate), appoint other officers (with the advice and consent of the Senate), make treaties (with the advice and consent of the Senate), commander in chief of the armed forces provided for and maintained by the legislature. | The Supreme Court can judge cases based on the laws of the United States passed by the legislature and treaties made by the president and the Senate. The Chief Justice will preside over an impeachment trial of the president. |
1. Publius believed that it was essential that the House of Representatives branch should have immediate dependence on and sympathy with the people through elections. Centinel believed that the House of Representatives would have too few members to truly represent the people because they would not understand the local wants and circumstances. The people would not be able to prevent corruption in the House because they would be so far removed from their representatives.

2. Publius believed that the two year term will secure that the representatives understand the needs of the people they represent. Centinel believed that the term of the House members was too long to ensure that they depend on and are accountable to their constituents.

3. The legislative branch can override the president’s veto on laws, the Senate can advise and consent to appointments and treaties made by the executive branch, and the Senate can hold impeachment trials for the president.

4. Publius believed that the separation of powers would promote freedom because no one branch could gain too much power. Each branch would have checks on the other branches to ensure that one branch didn’t overstep its bounds or infringe upon liberties. Centinel was concerned that Congress was given too power relating to taxation and the number of cases the Supreme Court could hear were too numerous. He feared that these extensive grants of power would end up absorbing the states entirely especially considering the Supremacy Clause. Regarding separation of powers, Centinel feared that the president would become a minion or dictator of the Senate and that the Senate itself would lead to an American aristocracy.

5. Accept reasoned answers.