

Understanding *Federalist 51*

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Learning Objectives

- Identify the significance of the *Federalist Papers* to an understanding of the American Constitution.
- Identify Madison's purpose in writing *Federalist 51*.
- Explain the role of separation of powers in the preservation of liberty.

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Learning Objectives (Cont.)

- Describe the role played by checks and balances in the preservation of liberty.
- Identify the provisions included in the Constitution to prevent legislative dominance.
- Explain the phrase: “Ambition must be made to counteract ambition.”
- Describe how the “compound republic” protects liberty.

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Learning Objectives (Cont.)

- Describe the solution Madison offers to the problem of the tyranny of the majority.

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Key Terms

- *The Federalist Papers*
- Separation of Powers
- Legislative Power
- Executive Power
- Judicial Power
- Checks and Balances

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Key Terms (Cont.)

- Compound Republic
- Federal System
- Tyranny of the Majority

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The Federalist Papers

- Essays written in 1787 and 1788 by James Madison, John Jay, and Alexander Hamilton under the penname of Publius
- Designed to advocate the ratification of the new constitution by the states
- An authoritative but unofficial explanation of American government by those who created it

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Federalist 51

- Madison wrote *Federalist 51* in 1788.
- It was addressed to the people of the State of New York where a lively debate was underway over the ratification of the Constitution.
- It was subtitled as follows: “The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments.”

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Purpose

Madison wrote *Federalist 51* to explain how separation of powers with checks and balances protects liberty.

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Montesquieu

Madison borrowed the concept of separation of powers from Montesquieu, a French political philosopher.

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Powers of Government

Montequeiu identified three types of political power:

Legislative power = the power to make laws

Executive power = the power to enforce laws

Judicial power = the power to interpret laws

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Preserving Liberty

Montesquieu declared that in order to preserve liberty it was essential that no one person or group of persons exercise all three powers. If one person or one group of people were able to exercise all three types of power, that person would be a threat to individual liberty.

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Separation of Powers

Separation of powers is the division of political power into legislative, executive, and judicial branches of government.

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The Branches of Government

- The legislative branch is the Congress.
- The president heads the executive branch.
- The U.S. Supreme Court is the highest court in the judicial branch of government.

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Independent Branches

Madison writes that the government under the Constitution should be so constituted that the branches of government (he calls them “departments”) keep “each other in their proper place.” In order to achieve this goal, each branch should be independent of the other branches.

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Ensuring Independence

The best way to guarantee the independence of the branches of government from one another is to ensure that the members of each branch have as little as possible to do with the selection of the members of the other branches.

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Selection Process

Congress: Members of the House are chosen by the people. In the original Constitution, state legislatures selected senators. Today, they are elected by the people.

President: Selected by an electoral college.

Judiciary: Appointed by the president with Senate confirmation.

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Judges are Different

- The best way to ensure independence of the branches is for the members of each branch to be chosen by the people in election.
- However, election is not feasible for members of the judicial branch because special qualifications are needed.
- Even though judges are appointed, lifetime appointments soon renders them independent.

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Salaries

Madison declares that the independence of the branches is further enhanced by making the members of each branch as little dependent as possible on the other branches for their salaries.

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Ambition v. Ambition

The best protection against any one branch growing too powerful is to empower the members of each branch to oppose the encroachments of the other branches. “Ambition must be made to counteract ambition.”

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Human Nature

Madison had a realistic view of human nature.

“If men were angels,” he said, “no government would be necessary.”

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Challenge of Government

- The government must be able to control the governed.
- The government must be able to control itself.

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How to Control Government?

- “A dependence on the people is . . . the primary control.” In other words, the electoral process keeps government in check.
- Democracy is not the only means of controlling the government.
- The other means of controlling government is checks and balances.

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Checks and Balances

Madison declares that the “constant aim” of the Constitution “is to divide and arrange the several offices in such a manner as that each may be a check on the other.”

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Overlapping Authority

The constitutional powers of the branches of government overlap. The members of each branch consequently have an incentive to reign in another branch if they believe the other branch is overstepping its authority.

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Military Power

The Constitution divides military power between the executive and legislative branches.

- The president is commander in chief.
- Congress has sole authority to declare war.
- Congress has authority to “raise and support armies.”
- Congress has authority to “provide and maintain a navy.”

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Diplomatic Power

- The president negotiates treaties.
- The Senate must ratify treaties by a two thirds vote.
- The president appoints ambassadors.
- The president may receive ambassadors from other countries.
- The Senate must confirm appointments by majority vote.

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Overlapping Powers

The members of the branches of government have both the power and the incentive to hold either in check. If the members of Congress disagree with the president's foreign policy, for example, the Senate can reject treaties or refuse to confirm ambassadors. Congress can write its own defense budget to reflect its defense policy preferences rather than the president's.

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Are Branches Equally Powerful?

Madison warns that the legislative branch will necessarily be the strongest branch.

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Controlling the Legislative Branch

Madison offers two remedies to the danger of legislative dominance:

1. **Dividing the legislature into different branches—that is, creating a bicameral (two chamber) legislature with a House and Senate.**
2. **Strengthen the executive by giving it a veto over measures passed by the legislative branch.**

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Compound Republic

Madison describes the American system of government as a “compound republic.”

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The Federal System

The federal system divides political power between a national government with authority over the entire nation and a series of state governments.

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And Separation of Powers

Separation of powers with checks and balances divides political power among legislative, executive, and judicial branches of government.

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Vertical and Horizontal

Federalism divides power vertically between the national government and the states. Separation of powers divides each level of government among legislative, executive, and judicial branches of government.

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Double Security

Madison notes that the compound republic provides a double security to liberty:

1. Federalism divides power between two levels of government that check one another.
2. Separation of powers with checks and balances divides each level of government into distinct and separate units that check one another.

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The Tyranny of the Majority

In a republic, a majority may threaten the rights of the minority. The tyranny of the majority is the abuse of the minority by the majority. For example, members of the majority religion could force members of small sects to observe the majority faith.

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Protecting Minority Interests

Minority interests can be protected by creating a will in the community independent of the majority, such as a monarch. Madison says that this is an unsatisfactory solution, however, because the monarch may be unjust and turn against both the majority and the minority.

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Madison's Solution

In the United States, minority interests find protection in a society with a multiplicity of interests. In a large federal republic, such as the United States, the large number of interests will ensure that no one interest is large enough to become the majority interest. Without a majority interest, the threat of the tyranny of the majority is gone.

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Dividing Power as a Solution

By dividing power among branches and levels of government, the Constitution prevents the concentration of power in one group. Multiple interests will guard against the danger of any one interest being strong enough to dominate society.

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Advantage of a Large Republic

“In the extended Republic of the United States, and among the great variety of interests, parties, and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good.”

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Question

Occasionally, people unhappy with a particular judicial decision propose changing the Constitution to deny federal judges lifetime appoints. Instead, they would require that judges face periodic reappointment. How would Madison react to that sort of proposal?

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Answer

Madison would likely oppose the periodic reappointment of federal judges because it would undermine the independence of the judicial branch of government from the executive and legislative branches.

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Question

President Richard Nixon resigned in 1974 at the height of the Watergate scandal in the face of likely impeachment and removal by the Congress. Would Madison have considered this development a triumph for the Constitution or a defeat?

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Answer

President Nixon was accused of abusing the powers of his office. Congress provided a check and balance on the president when it began the impeachment process. Madison would have declared that the entire episode demonstrated the effectiveness of the constitutional system for preventing any one branch from growing too powerful.

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Question

How does checks and balances protect liberty?

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Answer

Checks and balances helps preserve liberty because it is designed to prevent any one branch of government from becoming too powerful. Because of checks and balances, the powers of government overlap. Consequently, if one branch tries to become too powerful, the members of the other branches have an incentive to keep the first branch in check.

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Discussion question

According to Madison, does the success of the Constitution depend on the honesty and good nature of the president, members of Congress, and judges? Discuss.

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Discussion question

During the George W. Bush administration, Senate Democrats blocked several of the president's judicial nominees on the grounds that their political views were extreme. Is this the sort of political conflict that Madison would have anticipated? Would he have approved of it?

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Discussion question

How does dividing Congress into two branches diminish the danger of legislative domination of the government? Explain.