

CONSTITUTION 101

Module 6: Separation of Powers and Federalism 6.5 Primary Source

JAMES MADISON, FEDERALIST NO. 51 (1788)

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On February 8, 1788, James Madison published *Federalist* No. 51—titled “The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments.” In this famous *Federalist Paper* essay, Madison explained how the Constitution’s structure checked the powers of the elected branches and protected against possible abuses by the national government. With the separation of powers, the framers divided the powers of the national government into three separate branches: a legislative branch (called Congress), an executive branch (led by a single president), and a judicial branch (headed by a Supreme Court). By dividing political power between the branches, the framers sought to prevent any single branch of government from becoming too powerful. At the same time, each branch of government was also given the power to check the other two branches. This is the principle of checks and balances. Madison and his fellow framers assumed that human nature was imperfect and that all political elites would seek to secure greater political power. As a result, the framers concluded that the best way to control the national government was to harness the political ambitions of each branch and use them to check the ambitions of the other branches.

Excerpt:

Separation of powers is a core feature of the Constitution, requiring the division of power between a legislative branch, an executive branch, and a judicial branch. In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others.

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Each branch of government should have the power to check the other branches of government. It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal. But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack.

CONSTITUTION 101

Module 6: Separation of Powers and Federalism 6.5 Primary Source

Human beings are imperfect and ambitious, so we need a government structure that guards against abuses of power. 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.

Representative government, elected by the people, is an important check on government abuses, but further checks are necessary. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions. This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State. But it is not possible to give to each department an equal power of self-defense.

The legislative branch is the most dangerous, so we must divide its power into two separate houses. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified.

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Power is first divided between the national government and the states (federalism) and then between the three branches of government (separation of powers). In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

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CONSTITUTION 101

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Government must also protect minority rights. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.

Minority rights are best protected in America by the size of the republic and the diversity of interests, making it difficult for a durable majority to form and oppress the minority.

There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.

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The goal of government is justice. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful.

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**