

## An Energetic, yet Limited, Government

The Founders understood that governments are necessary for the protection of individual liberty and for human society to flourish. But the power of government must be limited, or it can interfere too much with liberties and private society. At the same time, governments cannot be too weak because an ineffective government cannot fulfill its purposes; a weak government can lead to anarchy in ways that endanger liberty. The challenge facing the Framers of the Constitution was to find the delicate balance between too much government and too little government, which was not an easy task.

In early 1787, Virginian James Madison was preparing to attend the Constitutional Convention in Philadelphia. Madison was extremely concerned about the young United States under the Articles of Confederation. Events across the country seemed to reveal the weaknesses of the Articles, and Madison worried the nation was imperiled. Massachusetts farmers were revolting in Shays' Rebellion, states were engaged in trade wars with each other, the national government was unable to collect revenue, and the states were violating the Paris Peace Treaty that had ended the war. Madison feared that all this chaos would lead to injustice and endanger liberty.

With the help of crates of books that his friend Thomas Jefferson sent from Paris, Madison read widely and deeply about ancient and modern governments, hoping to apply their lessons to the American situation. He penned a document entitled *Vices of the Political System of the United States* and described the flaws in the Articles. He outlined 11 criticisms, all focused on the weaknesses of the central government and the problems of the states having supreme sovereignty. He was also concerned that majorities in states were passing unjust laws and violating rights. He shared the document with fellow Virginians George Washington and Edmund Randolph, and then developed a plan to achieve a stronger national government.

The strategy involved getting the Congress under the Articles to authorize the revision of the national government. Although the Confederation Congress had only authorized the Philadelphia Convention to revise the Articles of Confederation, Madison took more drastic

measures. He and other members of the Virginia delegation arrived early and met with the members of the Pennsylvania delegation. They discussed his plan of government, the Virginia Plan, and planned to introduce it early in the Convention. Over the next five months, the delegates to the Convention scrapped the Articles and drafted a new constitutional government with greatly expanded powers exercised by the national government. Most importantly, the Constitution redefined the relationship of the national government to the people.

But this new government would not have unlimited powers. The Framers worked carefully to craft it, relying on several constitutional principles that they hoped would prevent tyranny, secure liberty, and preserve natural rights. The Founders may have disagreed over the exact limits and boundaries of power as evidenced by the ratification debate between the Federalists and Anti-Federalists, but they shared a view that government should be limited in a republic.

The Founders started with certain assumptions about human nature. Writing under the pen name Publius, Madison asked in *Federalist* #51: “What is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary.” The Founders thought that humans are flawed but capable of virtue, which makes self-government possible with certain protections and structures in place. Because of human nature, Madison wrote, a republican framework of government must “control the governed,” and then government “must control itself.”

But how would this control be established? The greatest control on government and safeguard of liberty in a republic, Madison argued in *Federalist* #51, was a “dependence on the people.” The Declaration of Independence asserted the principle that a sovereign people formed a government with the purpose of protecting their natural rights. The Constitution would affirm this principle in its preamble, stating that “We the People . . . do ordain and establish this Constitution for the United States of America.” The Constitution, then, would strengthen the government, but that stronger government would still depend for its existence on “We the People.”

Despite this dependence on the people, James Madison argued in *Federalist* #51 that experience had “taught mankind the necessity of auxiliary precautions.” This meant additional protections were needed to control the government. In a republic, he stated, the “legislative branch necessarily

predominates.” The Congress was the first branch of government because it was the closest to the people, but it also wielded tremendous power in its role of making laws and levying taxes on the people. Therefore, the Framers split the Congress into two houses (bicameralism) and gave them different-length terms, modes of election, and functions. The House represented the people directly, and the Senate represented the states.

The principles of separation of powers and checks and balances were critical to controlling the power of the government. As Madison asserted, each branch of government—legislative, executive, and judicial—should be independent of each other and “have a will of its own.” The three branches would have distinct powers: Congress would make the laws, the president would enforce the laws, and the Supreme Court would interpret the laws. Enlightenment thinkers such as Locke and Montesquieu, as well as the experience under the British and in the states, influenced the principle of separation of powers.

The branches also exercised “checks and balances” over each other. For example, Congress would debate and pass bills, the president could sign them into law or veto them, and the Congress could overturn a veto by a two-thirds majority vote in each house. The House could impeach a president for treason, bribery, or other high crimes and misdemeanors, and the Senate could hold a trial deciding whether to convict and remove the president with the Supreme Court’s chief justice presiding.

One of the other most important limits on government is the constitutional principle of federalism. The American government is made up of three levels of government: local, state, and national. The national government is the most powerful. But the local and state governments are closer to the people and most responsive to them. With a separation of powers among the branches of government and the different levels of government, Madison thought the Constitution created “a double security” in protecting “the rights of the people.”

Madison also thought that having a large republic would help guarantee liberty. While Anti-Federalists argued that a smaller republic was better at safeguarding liberty, Madison and the Federalists asserted that a large republic would better prevent tyranny. The vast scale of a large

republic would divide people into many different groups, interests, and regions, so it would be hard for an oppressive majority faction, or group, to form and violate the rights of the minority. Thus, the republican government would govern more justly in a large country.

Ultimately, Madison thought, all these limits on government and constitutional precautions would help secure justice. And for him, this was the ultimate goal. “Justice,” Madison wrote, “is the end of government. It is the end of civil society.”

The Constitution simultaneously strengthened the powers of the national government and employed several principles that limited that government by dividing power. The purpose of American self-government was to preserve the rights and liberty of the people within a society of just laws.