

# AP<sup>®</sup> U.S. GOVERNMENT Foundational Documents

## Study Guide Pack



## THE DECLARATION OF INDEPENDENCE (1776)

The United States Declaration of Independence was the official statement by the thirteen colonies in which they explained why they no longer considered themselves subject to British rule. The Declaration of Independence established the thirteen colonies as sovereign states that were officially at war with the Kingdom of Great Britain.

### KEY TERMS

#### Unalienable Rights

The Declaration of Independence asserts that all men are endowed with “unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” The political idea that people are born with natural rights—instead of being given them by a government—can be traced to the ideas of Enlightenment thinkers like John Locke and Thomas Hobbes. While this term is often spelled as “inalienable rights” in modern texts, the Declaration of Independence retains the eighteenth-century spelling.

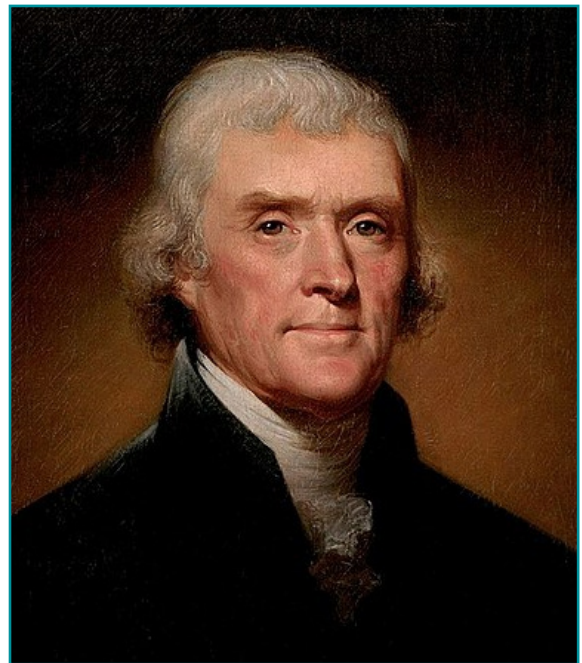
#### Usurpations

A usurpation is illegal infringement. Within the context of the Declaration of Independence, the former colonists used the term to accuse the Kingdom of Great Britain of wrongfully seizing authority that should rightfully belong to the people of the colonies.

### SUMMARY OF THE DECLARATION OF INDEPENDENCE

The Declaration of Independence was adopted in July 1776, almost a year after Great Britain and members of the thirteen colonies first began an armed conflict over the right of the British government to rule the territories. Many colonists were strongly influenced by **Enlightenment** political theories about **social contracts**, which argued that a government could only rule if it had the consent of the governed. The authors of the Declaration, Thomas Jefferson, John Adams, and Benjamin Franklin, all were well versed in Enlightenment philosophy.

From the point of view of the colonies, Great Britain did not have the consent of the colonists because they were not represented in Parliament. When Great Britain attempted to impose a series of taxes on the colonies to recoup expenses paid during the course of the **French and Indian War**, the colonists protested that the British government no longer had their consent to rule the colonies. The Declaration of Independence was their statement of grievances and their explanation as to why they no longer considered themselves under British rule.



*Thomas Jefferson, the primary author of the Declaration of Independence*

### NOTES

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**THE DECLARATION OF INDEPENDENCE** (1776)**KEY TERMS, cont'd.****Consent of the Governed**

According to the Declaration of Independence, all governments derive their authority from “the consent of the governed.” This reflects Enlightenment thinking that government and the people that are governed participate in a social contract. Each side has obligations toward the other. If a government oversteps its authority, the people can remove their consent to be governed.

The Declaration of Independence consists of five main parts: introduction, preamble, indictments, denunciations, and conclusion.

The introduction includes the strongest statement of Social Contract Theory by arguing that people have the right to rebel against governments that no longer adequately represent their interests. This political approach justifies the decision the colonists made to declare **sovereignty** from colonial rule.

The preamble, which includes the famous statement that “we hold that these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights,” established the idea that colonists felt that Great Britain directly violated what they saw as their **natural rights**.

The indictment section that follows includes a long list of specific ways that King George was seen as not treating the colonists fairly. The indictment section established an important precedent in American history by outlining the kinds of actions that would and not be acceptable from the government. Many of the actions that King George was accused of in the Declaration of Independence were later explicitly prohibited in the **U.S. Constitution** and the **Bill of Rights**.

The denunciation wraps up the indictments by concluding that King George’s offenses were so grievous as to merit rebellion. This section served as a clear statement that the U.S. people desired to be ruled by a **limited government**, not an expansive monarchy. The document finishes with a concluding statement that the colonies are now sovereign states that together form the United States of America.



*John Trumbull's 1819 artistic rendering of the Declaration of Independence being presented to Congress*

## THE DECLARATION OF INDEPENDENCE (1776)

### KEY PASSAGE

“The unanimous Declaration of the thirteen united States of America, When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

What does this mean? Can you put it in your own words?

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. —That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. —Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.”

Why do you think that these rights were highlighted by the authors of The Declaration of Independence?

According to the Declaration of Independence, when is rebellion justified?

### THE DECLARATION OF INDEPENDENCE IN THE CED

LOR-1.A: Explain how democratic ideals are reflected in the Declaration of Independence and the U.S. Constitution.



# THE ARTICLES OF CONFEDERATION (1777)

The Articles of Confederation and Perpetual Union was the first constitution formed among the thirteen original states of the United States. It was approved by the Second Continental Congress in 1777 but did not come into force until 1781.

## KEY TERMS

### Sovereignty

Sovereignty refers to the authority to provide governance. The Articles of Confederation reserved most of sovereignty for the states. It established a very weak central government that did not have the sovereignty to compel states to furnish armies, effectively negotiate foreign policy, or collect taxes.

### Confederation

A confederation is a group of entities united under a shared cause. The Articles of Confederation united the new states in a “league of friendship” that stressed the independent nature of each of the states. The confederation that it formed was based on voluntary cooperation.

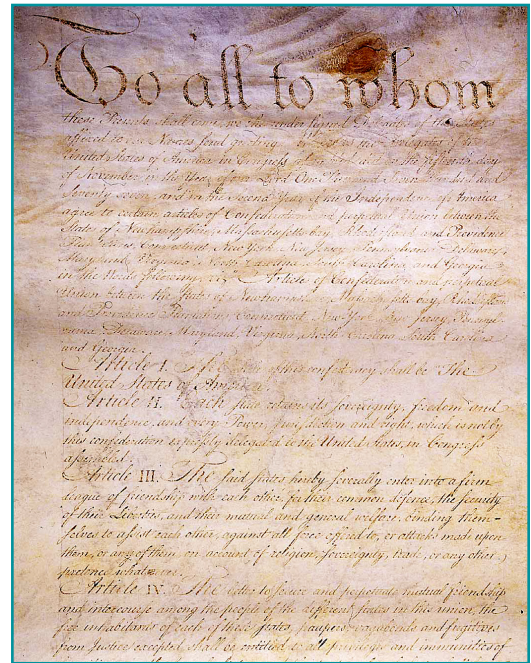
### Ratification

Ratification is the act of giving formal consent. For the Articles of Confederation to be ratified, it took almost four years for all thirteen states to agree to the document.

## SUMMARY OF THE ARTICLES OF CONFEDERATION

The Articles of Confederation was the first attempt by the newly independent American colonies to form a cohesive union governed by a written constitution. It established that the states were united in a “league of friendship” and that they mutually agreed to cede some **sovereignty** to a central government. While it represented an important step in establishing the political structure of the United States, it was plagued with many problems because the federal government that it established was too limited to effectively govern the new nation. The limitations of the Articles of Confederation were resolved when it was put it aside in favor of the **U.S. Constitution**.

One of the major flaws of the Articles of Confederation was that it established a very weak **executive**. The president of the United States in Congress Assembled (the official title of the executive of the document) could not act independently in any way. They were a ceremonial figurehead that primarily served as the chief administrator of Congress. They also served a relatively short one-year term. When the flaws of the Articles of Confederation became apparent, Alexander Hamilton argued in **Federalist No. 70** that the U.S. government should adopt the exact opposite model than what was included in the Articles by having a **unitary executive** who could act independently.



The Articles of Confederation and Perpetual Union, 1777

## NOTES

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## THE ARTICLES OF CONFEDERATION (1777)

The weakness of the executive branch had far reaching implications. The fact that Congress was responsible for all major decisions, not a unitary executive, hindered the new nation's ability to develop effective foreign policy. Under the Articles of Confederation, Congress needed to have a **quorum** to approve any treaties. This rarely occurred, so treaties and foreign policy decisions, and proposals for political alliances often languished in Congress for months.

Under the Articles of Confederation, Congress also lacked any way to compel the states to take action. Without any enforcement mechanisms at its disposal, the federal government could not compel states to provide troops for military actions or collect taxes. Without either the "**power of the purse**" or control of the military, the federal government could not take meaningful action on a national scale. This lack of power became apparent after Shay's Rebellion when the central struggled to marshal enough troops to put calm the disturbance.

By 1787, it was clear that the Articles of Confederation needed to be significantly revised. The states called a convention, later called the **Constitutional Convention**, which initially intended to rewrite the document. It soon became apparent that more significant changes were needed than just a few edits. The Constitutional Convention set themselves to developing the U.S. Constitution, which would replace the Articles of Confederation.

### KEY PASSAGE

Article I. The Stile of this Confederacy shall be "The United States of America."

Article II. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.

Article III. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

What is the relationship between the states and the federal government according to the Articles of Confederation?

What does this mean? Can you put it in your own words?

## THE ARTICLES OF CONFEDERATION (1777)

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State, of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.”

What is the benefit of free movement of people across the nation? Does this stipulation apply to slaves?

## THE ARTICLES OF CONFEDERATION IN THE CED

LOR-1.A: Explain how democratic ideals are reflected in the Declaration of Independence and the U.S. Constitution.

CON-1: The Constitution emerged from the debate about the weaknesses in the Articles of Confederation as a blueprint for limited government.

CON-1.B: Explain the relationship between key provisions of the Articles of Confederation and the debate over granting the federal government greater power formerly reserved to the states.

CON-1.B.1: Specific incidents and legal challenges that highlighted key weaknesses of the Articles of Confederation are represented by the:

- Lack of centralized military power to address Shays' Rebellion
- Lack of tax law enforcement power

## NOTES



## BRUTUS NO. 1 (1787)

The first in a series of letters written by Brutus, an anonymous anti-federalist, that urged the people of New York to reject the proposed Constitution.

### KEY TERMS

#### Federal

Brutus defined a federal government as a government in which several states form a cohesive unit. He worried that the ways that the Constitution defined the federal government would not allow states to retain their independence for internal matters.

#### Confederation

The term “confederation” and “confederated” comes up often in Brutus 1. Within the letter, confederation and all of its grammatical forms, stresses the idea of an alliance. He uses the term to describe both the idea of a “confederated government” that governs the United States as a whole and the “confederated republics” that already existed at the state level.

#### Republic

A republic is a political unit in which political power is held by the people and their elected representatives. Brutus feared that a creating “one great republic, governed by one legislature” would eliminate the independence of individual states.

### SUMMARY OF BRUTUS 1

In Brutus No. 1, its anonymous author is concerned about the way that the government was defined under the proposed Constitution. In its original and unamended form, the Constitution laid out a very strong centralized government. Both the **Necessary and Proper Clause** and the **Supremacy Clause** gave broad discretionary power to Congress and the Constitution—far more than had been granted to the central government under the **Articles of Confederation**.



*The first presidential mansion, occupied by President Washington.*

Brutus feared that the powers of the central government would be too expansive and would override the rights of states to manage their internal affairs. He saw this as a question of personal **liberty** and “the dignity of human nature” because a central government that overrode the states overrode the right of ordinary citizens to participate in their government. For Brutus, state governments should be the real source of power for the new nation. He argued that a **republic** could only work on a smaller scale, like in a state. A republic that attempted to include all the states would be too unwieldy to function effectively. As a result, it would no longer be able to reflect the interests of the people.



## BRUTUS NO. 1 (1787)

Another major concern for the author of Brutus No. 1 was the idea that the federal government could (and would) expand over time. He foresaw a future in which the federal government would use the liberal language of the Constitution to gradually assume more powers from the states. He was hesitant to accept the restrictions that the Constitution placed on the states to print paper or levy certain types of taxes. To Brutus, this represented an area in which the central government could gradually gain control over the states by exercising economic power over them. Another point of concern was the court system. Brutus was worried that the Supreme Court would overshadow state courts.

Some of the concerns raised in Brutus No. 1 were addressed through the adoption of the **Bill of Rights**, especially **the Ninth and Tenth Amendments**. Both of these amendments check the power of the federal government by specifying that political powers were still retained by the states and the people. Several of his concerns, however, came to fruition after the Constitution was ratified. For example, the Supreme Court has gradually become a more powerful legislative force after establishing the right of judicial review in *Marbury v. Madison* (1803).

### KEY PASSAGES

“The first question that presents itself on the subject is, whether a confederated government be the best for the United States or not? Or in other words, whether the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction of one executive and judicial; or whether they should continue thirteen confederated republics, under the direction and controul of a supreme federal head for certain defined national purposes only?”

“This enquiry is important, because, although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it. This government is to possess absolute and uncontrollable power, legislative, executive and judicial, with respect to every object to which it extends...”

“the constitution and laws of every state are nullified and declared void, so far as they are or shall be inconsistent with this constitution... The government then, so far as it extends, is a complete one, and not a confederation.”

According to Brutus, how much power should be given to the federal government? Why?

What are Brutus’s concerns about the proposed federal government? Are these concerns justified based on the text of the Constitution? Why or why not?

What did Brutus think should be the role of the states in the new United States?

### BRUTUS IN THE CED

LOR-1.B.2: Different aspects of the U.S. Constitution as well as the debate between Federalist No. 10 and **Brutus No. 1** reflect the tension between the broad participatory model and the more filtered participation of the pluralist and elite models.

CON-1.A.2: Anti-Federalist writings, including **Brutus No. 1**, adhered to popular democratic theory that emphasized the benefits of a small, decentralized republic while warning of the dangers to personal liberty from a large, centralized government.

ENDURING UNDERSTANDING LOR-1: A balance between governmental power and individual rights has been a hallmark of American political development.

## THE CONSTITUTION OF THE UNITED STATES (1787)

The Constitution of the United States replaced the Articles of Confederation as the supreme law of the land in the United States of America. It was drafted in 1787 but did not come into force until 1789. It established a strong federal government, delegated certain rights to the states, and protected the personal rights and liberties of the American people.

### KEY TERMS

#### Federalist

#### Separation of Powers

The U.S. Constitution using Enlightenment political theory to develop a government with a separation of powers, in which different branches of government have different responsibilities. It supported the idea of three separate branches of government: the executive, the legislature, and the judiciary.

#### Enumerated and Unenumerated Rights

Enumerated rights are rights that are specifically listed as belonging to an entity or group. Unenumerated rights are the opposite; they are rights that are assumed to belong to an entity or group without being specifically detailed. The U.S. Constitution specifies a range of enumerated rights for the federal government, but states in the Ninth Amendment that unenumerated rights belong to the states and the people.

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### SUMMARY OF THE CONSTITUTION OF THE UNITED STATES

The Constitution of the United States replaced the **Articles of Confederation** as the supreme law of the land in the United States in 1789. The U.S. Constitution was built on a framework of **Enlightenment** ideas about **checks and balances** and **separation of powers** that privileged the idea of a multi-branch government in which each branch could balance out the actions of the others to promote national stability. It established a political structure that included three branches—the **executive**, the **legislature**, and the **judiciary**—each of which have delegated responsibilities.

Unlike the Articles of Confederation, the U.S. Constitution afforded broad and expansive powers to the federal government. The strong federal government it established was a direct counter to the weak federal government established under the Articles, which could not compel the states to use their militaries, collect taxes, or negotiate foreign policy effectively. While many of the powers of the federal government are **enumerated powers** within the U.S. Constitution, some powers of the federal government are considered **unenumerated powers**.

The **Necessary and Proper Clause**, sometimes called the **Elastic Clause**, allocates to Congress the power to make all laws that are “necessary and proper” for the nation. However, what has been considered “necessary and proper” has been a point of debate throughout U.S. history. In the landmark decision **McCulloch v. Maryland** (1819), Chief Justice Marshall ruled that Congress had the power to take actions that were not specifically enumerated in the Constitution, such as forming a national bank.

The **Supreme Court** also provided guidance on how to interpret the **Commerce Clause**, an enumerated power that gives Congress the right to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” When combined with the Necessary

## THE CONSTITUTION OF THE UNITED STATES (1787)

### KEY TERMS, cont'd.

#### Bill of Rights

The first ten amendments to the U.S. Constitution are collectively called the Bill of Rights. They include specific enumerated rights and liberties, and they limit the sovereignty of the federal government to only the enumerated powers with the U.S. Constitution itself. Several states required the addition of the Bill of Rights before agreeing to ratify the Constitution.

and Proper Clause, the Commerce Clause gives Congress broad authority to regulate trade. Since the Constitution's ratification, the power of the Commerce Clause has gradually expanded to include both interstate commerce and intrastate commerce that could reasonably have an effect on interstate trade.

The U.S. Constitution is able to maintain its authority over the states and the people through the **Supremacy Clause**, which states that the Constitution is the "supreme law of the land." Under this clause, the laws and actions of the federal government take priority over those of the states. Unlike under the Articles of Confederation in which the states were loosely allied in a "league of friendship" but maintained most of their individual sovereignties, the U.S. Constitution firmly established that the federal government has the ability to override state law and compel the states to take certain actions.

The Supremacy Clause has been used historically to override state laws that either deny citizens their appropriate rights and liberties or that conflict with federal statutes. Several constitutional amendments have been added in order to give the federal government the right to enforce laws through the Supremacy Clause. For example, the **Fourteenth Amendment** includes the **Equal Protection Clause**, an amendment passed during Reconstruction that ensured that all people born in the United States were to be considered citizens. This amendment was targeted at former slave states in the South that imposed unconstitutional restrictions on former slaves by denying them the rights of citizens. Similarly, the **Fifth** and Fourteenth Amendments both include **Due Process Clauses** that force the states to adhere to the federal standard of safeguarding life, liberty, and protecting against the arbitrary denial of life.

### KEY PASSAGES

#### 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 defence, 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."

What are the goals of the U.S. Constitution? Can you put them in your own words?

#### Article 1, 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 Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

**THE CONSTITUTION OF THE UNITED STATES (1787)****Article 1, Section 8 cont'd.**

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 an 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 Offences 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

How do the powers allocated to Congress in Article 1, Section 8 differ from those allocated to Congress under the Articles of Confederation?



## THE CONSTITUTION OF THE UNITED STATES (1787)

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, dock-Yards, 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.”

### Article 6

“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, any Thing 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.”

What is the relationship between the federal government and the states if the Constitution is the “supreme law of the land?”

## THE CONSTITUTION OF THE UNITED STATES IN THE CED

LOR-1.A: Explain how democratic ideals are reflected in the Declaration of Independence and the U.S. Constitution.

LOR-1.B.2: Different aspects of the U.S. Constitution as well as the debate between Federalist No. 10 and Brutus No. 1 reflect the tension between the broad participatory model and the more filtered participation of the pluralist and elite models.

CON-1: The Constitution emerged from the debate about the weaknesses in the Articles of Confederation as a blueprint for limited government.

CON-1.C: Explain the ongoing impact of political negotiation and compromise at the Constitutional Convention on the development of the constitutional system.

PMI-1: The Constitution created a competitive policy-making process to ensure the people’s will is represented and that freedom is preserved.

CON-2.A: Explain how societal needs affect the constitutional allocation of power between the national and state governments.

CON-2.B: Explain how the appropriate balance of power between national and state governments has been interpreted differently over time.

CON-3.A.4: The enumerated and implied powers in the Constitution allow the creation of public policy by Congress, which includes:

- Passing a federal budget, raising revenue, and coining money
- Declaring war and maintaining the armed forces
- Enacting legislation that addresses a wide range of economic, environmental, and social issues based on the necessary and proper clause

CON-4: The presidency has been enhanced beyond its expressed constitutional powers.

## FEDERALIST NO. 10 (1787)

The tenth essay in the Federalist Papers, a collection of writings that urged the people of New York to ratify the proposed Constitution. Although the essay was initially published anonymously under the name “Publius,” it has since been attributed to James Madison.

### KEY TERMS

#### Faction

Federalist No. 10 is deeply concerned with the issue of factions. Within the letter, Madison defines factions as a group of united citizens that are “adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.” He was deeply concerned that factions, driven by their own self-interest, could interfere with the rights of other citizens.

#### Property

According to Madison, property could lead to factionalism because the distribution of property in society is uneven. Federalist No. 10 expresses a concern that wealthy property owners could become an oppressive minority and that those people without property could form a faction that could force a redistribution of wealth.

#### Republic

A republic is a political unit in which political power is held by the people and their elected representatives. Madison supported the idea of a large republic because he felt that it would avoid the factionalism of direct democracy.

### SUMMARY OF FEDERALIST NO. 10

In Federalist No. 10, James Madison urges the people of New York to ratify the **U.S. Constitution** on the basis of its proposed republican government. According to Madison, a large republic, such as the one proposed by the Constitution, is the ideal form of government because it is able to effectively balance **majority rule versus minority rights**. In this essay, Madison was defending the proposed Constitution against critics, such as the author of **Brutus No. 1**, who argued that a large national republic would be unwieldy and ineffective.

Madison supported the idea of a nationwide republican government because he feared that both smaller republics that gave more power to the states and a nationwide direct democracy would lead to **factionalism**. Madison believed that factions were very dangerous because a committed faction could use its power to override the interests of others. The majority could easily override the interests of the minority.

Madison argued that a national republican government could prevent this kind of tyranny of the majority through the use of elected representatives. According to the argument in Federalist No. 10, a group of elected representatives is more likely to represent the actual will of a community than a **direct democracy** system in which the people vote directly, because the masses are easily swayed by the appeal of factionalism. Elected officials are less likely to be swayed because they are bound to represent their community’s greater interests.

In Federalist No. 10, Madison also responds to the Anti-Federalist argument that the new nation was geographically too large to be effectively managed by a strong republican government. Some Anti-Federalists argued that the geographic spread of the United States, along with its economic and social **diversity**, meant that it was not well-suited for a republic because it included so many diverse interests. Madison refuted this argument by suggesting

**FEDERALIST NO. 10** (1787)

that the diversity of the new nation, both in terms of geography and in terms of social and economic factors, was actually its greatest strength. According to Federalist No. 10, a diverse country could produce more “fit characters” for each election because it could draw from a wider population, and it could reduce the power of individual factions because so many different interest groups would need to compete for attention. No one faction would be able to wield an outsized amount of power.

Federalist No. 10 is often cited by the **Supreme Court** to support the argument that the Founding Fathers did not intend for the political landscape of American politics to be defined by sharp partisan divisions.

**KEY PASSAGE**

Among the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of

According to Madison, how could the presence of factions challenge the “character and fate” or a government?

What are Madison’s complaints about the current state governments? How could they be fixed with a national republic?

### KEY PASSAGE, cont'd.

our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations.

What are the effects of factions according to Madison?

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."

What does this mean? Can you put it in your own words?

### FEDERALIST NO. 10 IN THE CED

LOR-1.B.2: Different aspects of the U.S. Constitution as well as the debate between **Federalist No. 10** and Brutus No. 1 reflect the tension between the broad participatory model and the more filtered participation of the pluralist and elite models.

CON-1.A.1: Madison's arguments in **Federalist No. 10** focused on the superiority of a large republic in controlling the "mischiefs of faction," delegating authority to elected representatives and dispersing power between the states and national government.

ENDURING UNDERSTANDING LOR-1: A balance between governmental power and individual rights has been a hallmark of American political development.

### NOTES

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## FEDERALIST NO. 51 (1788)

The fifty-first essay in the *Federalist Papers*, a collection of writings that urged the people of New York to ratify the proposed Constitution. Although the essay was initially published anonymously under the name “Publius,” it has since been attributed to James Madison.

### KEY TERMS

#### Separation of Powers

Federalist No. 15 argued that the ideal form of government for the United States was one with a separation of powers, in which different branches of government have different responsibilities. It supported the idea of three separate branches of government: the executive, the legislature, and the judiciary.

#### Checks and Balances

Along with a separation of powers, Madison supported the idea of checks and balances within the government. According to this political theory, first developed by the Enlightenment thinker Montesquieu in *The Spirit of Laws* (1748), each branch of government should be able to limit the power of the other two. In Federalist No. 51, Madison argued that “ambition must be made to counteract ambition” in order to keep any one branch from wielding too much power.

### SUMMARY OF FEDERALIST NO. 51

In Federalist No. 51, James Madison launches a passionate defense of the proposed structure of the federal government under the **U.S. Constitution**. According to Madison, the Constitution developed a thoughtful response to the challenges of governance by developing a clear **separation of powers** embodied in three distinct branches of government and weighing the powers of these branches against each other through a series of **checks and balances**. In Federalist No. 51, Madison is responding to Anti-Federalist critics, such as the author of **Brutus No. 1**, who argued that the federal government was being given too much power.

Madison supported the idea of a government with clear separations of powers and checks and balances because of his belief that the government of the United States ultimately derived its authority from the people. He argued that balancing the branches of government against each other would prevent any one branch of government from exercising excessive power over the people. He argued that “if men were angels, no government would be necessary,” but since men were not angels, structural systems needed to be put in place to prevent those in power from trying to gain more authority at the expense of others.

In addition to the separation of powers at the federal level, Madison also supported the proposed Constitution because it would implement a **compound republic** which, like the federal checks and balances, would safeguard the rights of the people by weighing different components of the government against each other. In Federalist No. 51, Madison argues that the rights of the people would be well-protected under the government formed by the Constitution because they would be able to participate in republics at the local, state, and national level. All of these forms of government would also have additional checks and balances, leading to a compound system in which the rights of people were well protected from the dangers of tyranny.

### NOTES

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## KEY TERMS, cont'd.

### Compound Republic

A republic is a political unit in which political power is held by the people and their elected representatives. Madison supported the idea of a large republic because he felt that it would avoid the factionalism of direct democracy. In Federalist No. 51, he supported the idea of a compound republic in which power was divided first among the states and the federal government and then further divided within the federal government.

### Factions

Although Federalist No. 51 is primarily concerned about the separation of powers and checks and balances, it returns to the same theme of Federalist No. 10 by warning against factions. Madison was deeply concerned that factions, driven by their own self-interest, could interfere with the rights of other citizens.

Finally, Madison returns to a theme he first expressed in Federalist No. 10 by warning the American people again about the dangers of **factions**. Factions were very dangerous according to Madison because a committed faction could use their power to override the interests of others, leading to complicated questions of **majority rule versus minority rights**. In order to avoid a tyranny of the majority, Madison advocated for checks and balances and a separation of powers at all levels of government.

## KEY PASSAGE

"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.

Why is a separation of powers "essential to the preservation of liberty" according to Madison?

Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications;

Why should the judiciary branch be subject to additional restrictions?

**KEY PASSAGE, cont'd.**

secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal. But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

According to Madison, how should a government prevent one branch of government from overpowering another?

What does this mean? Can you put it in your own words?

**FEDERALIST NO. 51 IN THE CED**

PMI-1.A.2: **Federalist No. 51** explains how constitutional provisions of separation of powers and checks and balances control abuses by majorities.

**NOTES**

**FEDERALIST NO. 70** (1788)

The seventieth essay in the *Federalist Papers*, a collection of writings that urged the people of New York to ratify the proposed Constitution. **Federalist No. 70** is the fourth in a series of eleven letters that discuss the ideal role and function of the executive branch. Although the essay was initially published anonymously under the name “Publius,” it has since been attributed to Alexander Hamilton.

**KEY TERMS****Unitary Executive**

A unitary executive is a single person who represents the executive branch. Hamilton proposed that the president of the United States be able to act as an individual, rather than be regulated by an executive committee or privy council.

**Energy**

According to Hamilton, the energy of the executive is “the leading character in the definition of good government.” Hamilton’s definition of what constituted a president’s energy included four aspects: unity, duration, salary, and competent powers. Some scholars have interpreted the use of this term within *Federalist No. 70* to mean a president’s activity level, while others interpret it as a president’s willingness to represent the will of the people.

**Veto**

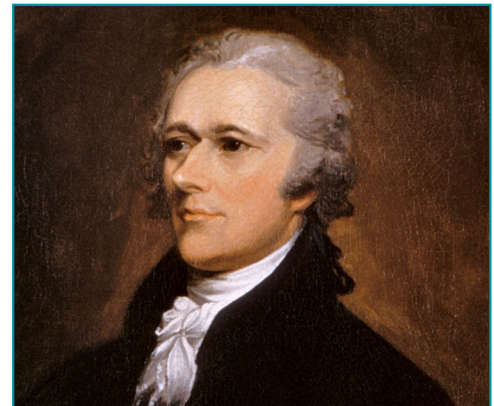
In *Federalist No. 70*, Hamilton discusses the executive veto as one of the most powerful tools of that branch of government. According to Hamilton, the presidential veto operated as a robust check on the powers of the other two branches of government.

**SUMMARY OF FEDERALIST NO. 70**

In *Federalist No. 70*, Alexander Hamilton defended the idea of a **unitary executive** against critics who argued that the executive branch should have an executive committee or a privy council. According to Hamilton, a unitary executive was the best option for the United States because it allowed the executive branch to operate with energy and safety. In addition, Hamilton expressed the view that having one single person represent the whole branch of the government increased the **accountability** of the executive branch as a whole.

Throughout *Federalist No. 70*, Hamilton argues for the importance of “energy” for the effective functioning of the executive branch. According to Hamilton, the **energy** of the executive constituted four distinct components: unity, duration, salary, and competent powers. A unitary executive must be able to hold a range of powers in one person (unity), serve long enough to provide stability to the government (duration), receive a salary so they would not be tempted to take bribes (salary), and have robust powers like the ability to veto actions by other branches (competent powers). He argued that an executive committee or a privy council would cause the executive branch to act with less energy.

Hamilton also supported the idea of unitary executive because he felt that having a single person represent the executive branch would lead to more **safety**. He uses the term “safety” within the letter in a way that was common for political thinkers of the time but is slightly less common



*Portrait of Alexander Hamilton, the author of Federalist No. 70*



## FEDERALIST NO. 70 (1788)

today. Within his writings, safety refers to the ability to keep the **republic** safe and secure. According to Hamilton, a unitary executive would lead to this kind of safety because the president would be dependent on the people and feel a sense of direct responsibility for them. Taken together, these two aspects would ensure that the republican ideals of the new nation were protected.

Finally, Federalist No. 70 addresses the idea that having an unitary executive would increase the ability of the American people to carefully observe the executive branch. He argued that the public would be able to narrowly watch one person but may not be able to devote the same kind of attention to a larger group of people. According to Hamilton, groups could easily “conceal faults and destroy responsibility.”

Presidents have consistently used Federalist No. 70 to support the **expanded presidential power**, especially in times of crisis. For example, President Lincoln’s decision to implement **martial law** during the American Civil War was most likely influenced by Hamilton’s argument. More recently, legal advisors for both President George W. Bush and President Obama have cited Federalist No. 70 to expand executive power.

### KEY PASSAGE

There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire, what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

The ingredients which constitute energy in the Executive are, first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers.

The ingredients which constitute safety in the republican sense are, first, a due dependence on the people, secondly, a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views, have declared in favor of a single Executive and a numerous legislature. They have with great propriety, considered energy as the most necessary

What is role of the executive in government? How does a government reflect the executive?

According to Hamilton, what is “energy”? Can you put this in your own words?

qualification of the former, and have regarded this as most applicable to power in a single hand, while they have, with equal propriety, considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and despatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished.

This unity may be destroyed in two ways: either by vesting the power in two or more magistrates of equal dignity and authority; or by vesting it ostensibly in one man, subject, in whole or in part, to the control and co-operation of others, in the capacity of counsellors to him. Of the first, the two Consuls of Rome may serve as an example; of the last, we shall find examples in the constitutions of several of the States. New York and New Jersey, if I recollect right, are the only States which have intrusted the executive authority wholly to single men. Both these methods of destroying the unity of the Executive have their partisans; but the votaries of an executive council are the most numerous. They are both liable, if not to equal, to similar objections, and may in most lights be examined in conjunction.

What makes a unitary executive the ideal form of an executive branch?

What are the dangers of requiring the executive to be responsive to a council?

## FEDERALIST NO. 70 IN THE CED

CON-4.C.1: Justifications for a single executive are set forth in **Federalist No. 70**.

ENDURING UNDERSTANDING CON-4: The presidency has been enhanced beyond its expressed constitutional powers.

## NOTES

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## FEDERALIST NO. 78 (1788)

The seventy-eighth essay in the Federalist Papers, a collection of writings that urged the people of New York to ratify the proposed U.S. Constitution. Federalist No. 78 is the first in a series of six letters that discuss the ideal role and function of the judiciary branch. Although the essay was initially published anonymously under the name “Publius,” it has since been attributed to Alexander Hamilton.

### KEY TERMS

#### Federalist

A supporter of the proposed U.S. Constitution. Federalists favored the U.S. Constitution because it instituted a strong federal government. They were opposed by Anti-Federalists who felt that the Constitution gave the federal government too much power at the cost of the states' authority.

#### Appointment

In Federalist No. 78, Hamilton argued that federal judges should have lifelong appointments. He argued that a life appointment would help keep the unelected federal judges insulated from political trends.

#### Judicial Review

The principle of judicial review allows the federal courts to review the constitutionality of decisions made by the legislature. According to Hamilton, this power was the greatest power of the judiciary because it did not have control over money or the military; the judiciary's function was “merely judgement.” The principle of judicial review would later become official case law in the United States through the decision in *Marbury v. Madison* (1803).

### SUMMARY OF FEDERALIST NO. 78

In Federalist No. 78, Alexander Hamilton passionately defends the structure of the judiciary branch under the proposed **U.S. Constitution** as being a politically sound option for the new nation. According to Hamilton, the U.S. Constitution outlines a judiciary branch that is independent and politically insulated while balancing its powers well against those of the other two branches of government. Federalist No. 78 was written in response to **Anti-Federalist** concerns that the proposed Constitution did not provide enough limitations on the power of the judiciary.

One of Hamilton's main arguments in favor of the proposed structure of the judiciary is that it establishes an independent branch of government. There were many safeguards built into the U.S. Constitution that ensured that the federal courts operated independently of political trends, such as the fact that judges to the Supreme Court were elected **for life appointments** and that they were unelected officials. According to Hamilton, this insulated judges from feeling the need to rule in a certain way to satisfy a constituency or out of fear for their job. Instead, they could focus on interpreting the Constitution without bias or influence.

Hamilton also supported that the proposed judiciary because it had limits to its authority. Under the proposed Constitution, Congress had control over the “**power of the purse**” and the executive had power over the military, but the judiciary did not have any power that rivaled the other branches. In Hamilton's view, this made the judiciary the weakest of all three branches. This was a good thing, according to Hamilton, because it limited the chance that the judiciary could become corrupted.

The only real power retained by the judicial branch was the power of judgement. The judiciary could review decisions made by the other two branches to ensure that they fit within what was allowed by the Constitution, but it ultimately relied on the other branches to enforce those decisions.

**FEDERALIST NO. 78** (1788)

Hamilton felt that the process of interpreting and applying the Constitution, called judicial review, could give the judiciary an appropriate amount of power to participate in the **checks and balances** of government without giving it too much authority.

Federalist No. 78 established an important precedent for judicial power, especially the process of judicial review. **Marbury v. Madison** (1803) affirmed that judicial review was an important power of the judicial branch.

**KEY PASSAGE**

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive.

For I agree, that “there is no liberty, if the power of judging be not separated from the legislative and executive powers.” And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation;

According to Hamilton, why is the judiciary the least dangerous to the Constitution?

What does this mean? Can you put it in your words?

Why does the judiciary have to remain independent?



### FEDERALIST NO. 78 (1788)

that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

### FEDERALIST NO. 78 IN THE CED

CON-5.A.1: The foundation for powers of the judicial branch and how its independence checks the power of other institutions and state governments are set forth in:

- Article III of the Constitution
- Federalist No. 78
- *Marbury v. Madison* (1803)

ENDURING UNDERSTANDING CON-5: The design of the judicial branch protects the Supreme Court’s independence as a branch of government, and the emergence and use of judicial review remains a powerful judicial practice.

### NOTES

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## LETTER FROM A BIRMINGHAM JAIL (1963)

Letter from Birmingham Jail is an open letter written by Dr. Martin Luther King, Jr. that provides a detailed explanation of King's approach to nonviolent resistance. King wrote the letter after he was arrested for protesting as part of the Birmingham campaign. While in jail, he read a statement by several clergymen protesting his methods. Letter from Birmingham Jail was his response to that letter.

### KEY TERMS

#### Segregation

In the United States, a series of laws, often called Jim Crow laws, legally separated white Americans and African Americans in public spaces. These policies created widespread social and economic inequality because the facilities available for African Americans were often significantly inferior to those available to whites.

#### Birmingham, Alabama

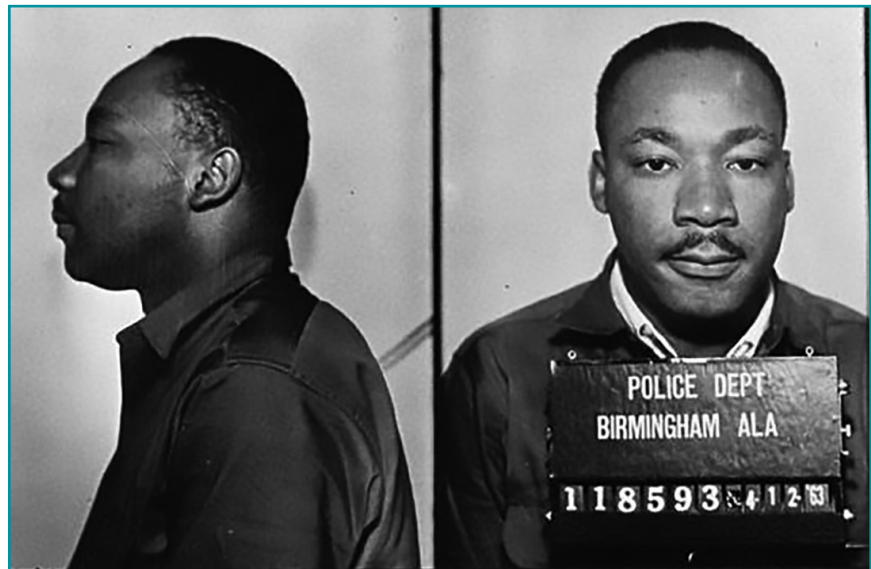
Birmingham, Alabama was targeted by King and other protestors for its endemic segregation and harsh conditions for African Americans. During the Birmingham campaign, the protestors waged a series of marches, lunch counter sit-ins, direct actions, and mass meetings against segregation during the Easter season in 1963.

#### Nonviolent Protest

Dr. Martin Luther King, Jr. popularized a style of nonviolent protest that was inspired by the approach used by Mohandas Gandhi and Henry David Thoreau. Based on his training as a Christian reverend, King believed that the most effective protests countered hate with love in order to effect real social change.

### SUMMARY OF LETTER FROM A BIRMINGHAM JAIL

In Letter from a Birmingham Jail, Dr. Martin Luther King Jr. lays out an argument about why nonviolent protest against segregation was both immediately needed and the most effective option to correct the social ills faced by millions of African Americans. The letter was a response to a statement titled "A Call for Unity" in a newspaper smuggled to King in jail in which a group of clergymen denounced King's actions. The authors of "A Call for Unity" felt that segregation could be most effectively countered through the courts. King's response focuses on how taking protests to the streets was a legal, political, and religious obligation.



*Dr. Martin Luther King Jr.'s mugshot from his arrest in Birmingham, Alabama in 1963*

One of the overwhelming themes of King's letter was the idea that protest should be nonviolent. King had developed a theory of nonviolent protest during his seminary studies that was inspired by the examples of Mohandas Gandhi and Henry David Thoreau.

**LETTER FROM A BIRMINGHAM JAIL** (1963)

As part of this approach, he utilized nonviolent methods such as sit-ins and marches to create what he called “constructive” tension. This tension would help forward meaningful discussions about race relations in America in a way that was not possible through the courts. According to King, going through the courts would not allow for real change. Only highly visible nonviolent protests would accomplish that goal because “freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.” King also rooted his argument in Letter from a Birmingham Jail in a legal argument that drew widely from Supreme Court decisions and from the founding documents of the United States. He quotes Chief Justice Earl Warren saying “justice too long delayed is justice denied” as part of his argument for why his campaign to end segregation could not be delayed. He also repeatedly mentions that he and his followers are simply advocating for the rights already given to them by the U.S. Constitution and its equal protection clause.

During the course of his letter, King also makes the argument that an unjust law does not have to be obeyed. In doing so, he echoes the ideas found in the works of Enlightenment thinkers like John Locke and the works of prominent Christian theologians such as St. Augustine and Thomas Aquinas. In King’s opinion, segregation laws do not have to be obeyed because they treat one group of people differently than another. As such, it is not morally wrong to disobey the laws. He wrote that the citizens of the United States have “not only a legal but a moral responsibility to obey just laws” and also “to disobey unjust laws.” Under this paradigm, protesting segregation is both the legal and the moral thing to do.



*Segregated seating at a Greyhound bus station in Georgia*

As would be expected from his role as a Christian minister, King also used religious arguments to convince his audience about the need to protest segregation. In doing so, he provided a precedent for later American movements to unite the language of religion and social change in their protests. Both the pro-life movement and the women’s rights movements drew heavily on the example provided by Dr. Martin Luther King, Jr.

**KEY PASSAGE**

“You may well ask: “Why direct action? Why sit ins, marches and so forth? Isn’t negotiation a better path?” You are quite right in calling for negotiation. Indeed, this is the very purpose of direct action. Nonviolent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize

## LETTER FROM A BIRMINGHAM JAIL (1963)

the issue that it can no longer be ignored. My citing the creation of tension as part of the work of the nonviolent resister may sound rather shocking. But I must confess that I am not afraid of the word “tension.”

I have earnestly opposed violent tension, but there is a type of constructive, nonviolent tension which is necessary for growth. Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half-truths to the unfettered realm of creative analysis and objective appraisal, so must we see the need for nonviolent gadflies to create the kind of tension in society that will help men rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood. The purpose of our direct action program is to create a situation so crisis-packed that it will inevitably open the door to negotiation. I therefore concur with you in your call for negotiation. Too long has our beloved Southland been bogged down in a tragic effort to live in monologue rather than dialogue.

One of the basic points in your statement is that the action that I and my associates have taken in Birmingham is untimely. Some have asked: “Why didn’t you give the new city administration time to act?” The only answer that I can give to this query is that the new Birmingham administration must be prodded about as much as the outgoing one, before it will act. We are sadly mistaken if we feel that the election of Albert Boutwell as mayor will bring the millennium to Birmingham. While Mr. Boutwell is a much more gentle person than Mr. Connor, they are both segregationists, dedicated to maintenance of the status quo. I have hope that Mr. Boutwell will be reasonable enough to see the futility of massive resistance to desegregation. But he will not see this without pressure from devotees of civil rights. My friends, I must say to you that we have not made a single gain in civil rights without determined legal and nonviolent pressure. Lamentably, it is an historical fact that privileged groups seldom give up their privileges voluntarily. Individuals may see the moral light and voluntarily give up their unjust posture; but, as Reinhold Niebuhr has reminded us, groups tend to be more immoral than individuals.

According to King, how is “constructive, nonviolent tension” necessary for growth?

Why did he choose this time to act?

Is King’s claim here supported by U.S. history? Why or why not?



## ***LETTER FROM A BIRMINGHAM JAIL*** (1963)

We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. Frankly, I have yet to engage in a direct action campaign that was “well timed” in the view of those who have not suffered unduly from the disease of segregation. For years now I have heard the word “Wait!” It rings in the ear of every Negro with piercing familiarity. This “Wait” has almost always meant “Never.” We must come to see, with one of our distinguished jurists, that “justice too long delayed is justice denied.”

What are the ways that an oppressed group can demand freedom? How did King advocate for his followers to protest?

### **LETTER FROM A BIRMINGHAM JAIL IN THE CED**

PRD-1.A.2: The leadership and events associated with civil, women’s, and LGBT rights are evidence of how the equal protection clause can support and motivate social movements, as represented by:

- Dr. Martin Luther King’s “Letter from a Birmingham Jail” and the civil rights movement of the 1960s
- The National Organization for Women and the women’s rights movement
- The pro-life (anti-abortion) movement

### **NOTES**

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