



UNLOCKING  
THE  
FEDERALIST PAPERS

Discussion Guide



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# 4 Separation of Power in the *Federalist Papers*

*Distributing the Mass  
of Power Among its  
Constituent Parts*

## STUDENT DISCUSSION GUIDE

### VIEW THE VIDEO

Thoughtfully view the video which can be found at <http://www.RootsofLiberty.org/videos>.

### ANALYZE THE SOURCE

Closely read the following excerpt from *Federalist No.48* (written by James Madison) and be prepared to discuss the questions that follow:

*The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex....*

*The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive, and less susceptible*

*of precise limits, it can, with the greater facility, mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments. It is not unfrequently a question of real nicety in legislative bodies, whether the operation of a particular measure will, or will not, extend beyond the legislative sphere...*

1. What is Madison referring to when he talks about the legislature’s “impetuous vortex”? Are his concerns justified?
2. Do you agree that the legislature’s constitutional powers (see Article I, Section 3) are both “more selective” as well as “less susceptible of precise limits” than the other two branches? What are the potential consequences of this type of power?
3. Throughout American history, have there been “encroachments” of the legislature on the executive or judicial branches? Have the other branches “encroached” on the legislative branch?
4. Madison is concerned that legislative bodies will not care whether or not their actions will “extend beyond the legislative sphere.” Was his concern valid in the 1790’s? Is it valid today?

## EXPLORE THE ESSAY

Thoughtfully read the essay, *Distributing the Mass of Power Among its Constituent Parts: Separation of Power in the Federalist Papers*, and be prepared to discuss the following questions:

1. Why does the Constitution create a system of checks and balances?
2. How does separation of powers “accommodate and take advantage of” our individual tendency to act out of self-interest?
3. How did Madison define tyranny? Do you agree with this definition?
4. Why does the Constitution not provide for complete separation of powers? What is the point in intentionally intertwining the three branches?
5. What are the three components of Madison’s concept of separation of powers?
6. What concerns are raised by “legislative tyranny” and how did Madison address those concerns?
7. Why did the Framers create a government which would be “intentionally inefficient at times”? What are some historical or contemporary examples of government inefficiency? Has the nation been helped or harmed by this inefficiency?
8. Review the lists of checks and balances. In your opinion, which are the one or two most significant checks of the legislative branch on the executive branch? on the judicial branch? Which are the one or two most significant checks of the executive branch on the legislative branch? on the judiciary? Which are the one or two most significant checks of the judicial branch on the legislative branch? on the executive? Does this system of checks and balances achieve Madison’s goal of protecting citizens from tyranny?

## CONNECT TO CURRENT ISSUES

Research one of the issues listed below to determine to what extent, if any, the system of separation of powers is functioning as it was intended to by the Founders.

- ▶ budget sequester
- ▶ congressional investigations of steroid use in professional sports
- ▶ senatorial confirmation of federal judges
- ▶ conduct of American foreign policy
- ▶ “judicial activism”



## SHOW WHAT YOU KNOW

Write a thoughtful, analytical essay answering any one of the questions from **Analyze the Source** or **Explore the Essay**.

The Founders were concerned that the legislative branch could dominate the other two branches. Which branch, if any, has dominated at various periods in American history? Does any particular branch dominate today and, if so, what are the consequences for the American constitutional order?



## LEARN MORE

The *Federalist Papers* referenced in this article are also discussed by these other authors in *Roots of Liberty*:

No. 47     Franck

No. 51     Miller, Presser, Franck

On-Line Versions of the *Federalist Papers*

- ▶ The Avalon Project: Documents in Law, History and Diplomacy  
<http://avalon.law.yale.edu>
- ▶ On Line Library of Liberty  
<http://oll.libertyfund.org>

Teaching American History: The Federalist-Anti-Federalists Debates

- ▶ <http://teachingamericanhistory.org/fed-antifed>