

Federalist 51: An International, Comparative Analysis

Grade Level: 9-12

Subjects: U.S. Government or U.S. History

Time Requirement: One 60 or 70-minute class period

Objective: Understand how and why the Founders designed a separation of powers for the U.S. Constitution and how it compares with other nations.

Background: In the 18th century, virtually no other nation separated executive, legislative, and judicial powers. The principle of the separation of powers was not an abstract principle but an integral expectation of how our government was to function. This is clear when looking at the text of the Constitution.

The enumerated (specified) powers:

- Article 1 to the Legislative Branch
 - Article 2 to the Executive Branch
 - Article 3 to the Judicial Branch
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Lesson Plan:

Part 1: Warm Up Activity (15 minutes)

Put students into five groups and have them work on the following exercise as a bell-ringer activity:

1. Using their textbooks, have each group identify the powers of their specified branch (divide the legislative part into three equal-sized sections since it is so large).
2. Ask each group to identify and rank what they consider the three most significant powers and defend their choices.
3. Lead a discussion, helping students to identify checks and balances.



Part 2: Set the Stage (10 minutes)

Help students to understand how most nations blend executive, legislative, and judicial powers rather than strictly separating them as the U.S. Constitution does by using two different nations as examples:

How Other Systems Work

A. Britain: Less separation

Most other nations do not have these strict firewalls among the three branches. Thus, they give enormous powers to their central governments that Americans would not recognize.

For example, let's look at Great Britain, from which many of our rights come. Its government blends executive and legislative powers thus creating a prime minister more powerful than our president. Since he or she also controls the Parliament (legislature), unlike our chief executive, the British Prime Minister can for example:

- Go to war with only the approval of the cabinet, which they appoint.
- Create or abolish executive departments (for example, such as our EPA) on their own.
- Coordinate with the Parliament to put through a budget (whereas the president submits it to Congress which usually changes, amends, or even rejects it)

However, they do have to periodically kiss the hand of the monarch, something Americans would likely not go for!

B. Russia: Separation of powers on paper

You can also have a separation of powers specified in a constitution, but the balance is always susceptible to being thrown off, usually in the direction of the executive.

For example, Russia has, on paper, a balanced system with a president, a Duma (parliament), and judiciary. However:

- President Vladimir Putin's party controls the Duma so it is a rubber stamp, meaning it approves whatever he sends to it.



- The Upper House of the Duma, the federation council, represents the districts of Russia. It approves budget legislation, treaties, judicial nominees, and troop deployment. Originally, its members were governors and the Duma heads from each region. However, after 2002 President Vladimir Putin took over the appointment of these positions, which gives him effective control of the entire process.
- There is a Constitutional Court with 19 members appointed by the President and approved by the Federation Council. Its role is to ensure all laws and decrees are constitutional. That means Russia technically has judicial review—just as the United States. However, they are appointed by Putin and would never dare challenge any of his directives.

Thus, to have a true separation of powers that endures over time is no small achievement for a nation!

Part 3: Primary Source Analysis: Federalist 51 (20 minutes)

How the Founders Designed a Separation of Powers

In 1787, when our Constitution was written, the idea of separating powers was highly unusual. Thus James Madison, in his famous essay Federalist #51, explained why it was a preferable system. Below is an excerpt from it:

It is equally evident (clear), that the members of each department should be as little dependent as possible on those of the others, for the emoluments (fees) annexed (added) to their offices. Were the executive magistrate (leader), or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal (insignificant). 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 (violations) of the others.

Reflection: Identify three reasons Madison gave for separating powers.

- 1.
- 2.
- 3.



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Like any good 21st century salesman, Madison had to pitch his idea to a skeptical audience, namely his countrymen. Thus, he famously explained the central problem facing any government created by humans. Below is probably the most famous passage on this subject in American history:

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.

1. What does Madison mean "If men were angels, no government would be necessary?"
2. What does he mean "you must first enable the government to control the governed; and in the next place oblige it to control itself?"
3. What does Madison think about human nature? Trusting? Distrustful? Do you agree or disagree? Explain.

Part 4: Analyze Select Powers (20 minutes)

Have students work in groups on the following:

1. The president serves as commander in chief of all military forces, but all funding must come from the Congress. The president cannot spend a penny without its approval.
 - A. Why do you think the Founders set it up this way?
 - B. Which branch, in your opinion, has more power? Explain.
2. The expansion or reduction of the number of federal courts has to go through Congress. However, the president appoints all judges in them.
 - A. Why do you think the Founders set it up this way?
 - B. Who, in your opinion, has more power? Explain.



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3. Congress has exclusive power over the District of Columbia (10 square miles) where the president resides. In other words, the president has no authority over the area, outside the White House, in which he or she operates. It's like forcing you to live in a neighborhood over which you have no control!
 - A. Why do you think the Founders set it up this way?
 - B. Do you believe this gives Congress too much power?
4. The president controls the nation's borders, through executive agencies, but Congress makes rules for naturalization (immigrants becoming citizens).
 - A. How does this represent a check and a balance?
 - B. Do you think it is a logical division of power?
5. The president cannot make or enact criminal penalties. Congress does that, including making all regulations for the military. However, the president has the power to pardon anyone, for no reason, for a federal offense (military or civilian) or to shorten their sentence.
 - A. Why do you think the Founders gave these powers to the president?
 - B. Does this seem to be a fair and logical division of power?
 - C. In some U.S. states, the governor and his or her cabinet meet and vote on pardons. Do you think this would have been a better system for our national government? Why or why not?

Part 5: Review and Check for Understanding (5 minutes)

- Most nations do not separate executive, judicial, and legislative powers to the extent the U.S. does.
- The Founders feared that blending these powers would lead to corruption and increase the power of elites.
- Madison was attempting to create a strong federal government, with separated powers, yet one not so powerful that it threatened liberty.

