



## America's Founding Documents

# Scholar Exchange Briefing Document

### WATCH

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The Advanced Placement (AP) exam has been rewritten for 2020 and covers three units with two free-response questions (FRQs). This fast-paced and fun session will review the founding documents from a typical course of study for an AP Government class.

Join Jeffrey Rosen, president and CEO of the National Constitution Center, to understand these essential documents better, understand the fundamental ideas from each of the documents, and the major principles of the U.S. Constitution. Primary sources include the Declaration of Independence, Articles of the Confederation, the Constitution and the Bill of Rights, Federalist papers (#51, #70, #78), Brutus #1, and the amazing Letter from the Birmingham City Jail. Great sources for all learners to know!

- Watch the session here: <https://constitutioncenter.org/interactive-constitution/educational-video/scholar-exchange-americas-founding-documents>

#### More helpful links:

- Watch recordings of all of our past Scholar Exchange sessions on our YouTube page: <https://www.youtube.com/user/ConstitutionCenter>
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### DECLARATION OF INDEPENDENCE

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On July 4, 1776, the United States officially declared their independence from the British Empire with the adoption of the Declaration of Independence by the Second Constitutional Congress. Two days earlier, the “Lee Resolution” passed the Second Constitutional Congress, resolving that the 13 colonies were “free and independent states” separating from the British Empire to create the United States of America. The “Committee of Five”—John Adams, Benjamin Franklin, Thomas Jefferson, Roger Sherman, and Robert Livingston—had been working on the Declaration since June 11, with Jefferson as the main drafter.

*Key Take-Home Points*

- The Declaration of Independence was a formal declaration by Congress that the United States was an independent nation. Jefferson looked to the English Declaration of Rights (1689) and Virginia's Declaration of Rights—authored by George Mason—as primary influences.
- The Declaration provided a list of grievances against King George III. (One Jefferson draft attacked the slave trade. It was removed by the Georgia and South Carolina delegates to Congress.)
- Power of preamble, “unalienable rights,” the people themselves as ultimate authority
- The Declaration changed American freedom, but it also was a global document—justified freedom by natural rights.
- Jefferson initially included among the grievances on addressing the slave trade: King George III “has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere or to incur miserable death in their transportation thither. . . . Determined to keep open a market where Men should be bought & sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or restrain this execrable commerce. And that this assemblage of horrors might want no fact of distinguished die, he is now exciting those very people to rise in arms among us, and to purchase that liberty of which he has deprived them, by murdering the people on whom he has obtruded them: thus paying off former crimes committed against the Liberties of one people, with crimes which he urges them to commit against the lives of another.” He was persuaded to alter the language to refer to “domestic insurrections among us” by South Carolina's delegates.

**ARTICLES OF CONFEDERATION**

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[View at the National Archives](#)

On November 15, 1777, the Second Continental Congress approved the Articles of Confederation—the first Constitution between the original 13 colonies. These were officially titled the, “Articles of Confederation and Perpetual Union,” and they preserved the independence and sovereignty of the states while creating a weak central government by opting for a “league of friendship” among states. The Articles were finally ratified and came into force on March 1, 1781, but the Continental Congress operated under the Articles from the time of their approval. John Dickinson of Pennsylvania was the chairman of the 13-man committee to write the Articles. However, the experience of both the war and the debt crisis of the 1780s showed many American leaders the weakness of the Articles. Under the Articles, the central government lacked the necessary powers to tax or the power to compel the States to

comply with requests for either troops or funding. In late 1786 and early 1787, Shay's Rebellion appeared to be a tipping point—as state militia had to respond to the eruption of violence over the growing national debt crisis because Congress could not fund a response. This led George Washington, Alexander Hamilton, James Wilson, James Madison and others to believe a convention needed to be held to consider revisions (and ultimately a new Constitution) to secure a stronger national government.

*Key Take-Home Points:*

- Under the Articles, any proposed amendment required unanimous consent from all 13 colonies. As a result, no amendment was ever ratified, although some got within a single vote of ratification.
- Congress could not declare war, enter into treaties and alliances, appropriate money, or appoint a commander in chief without nine states approving—a supermajority requirement which also made it difficult for the central government to conduct business.
- Congress also lacked the power to regulate commerce between the states. Combined with the lack of taxing power, this led to states raising regulatory barriers against each other—for instance, disputes over taxes between New Jersey, New York, and Connecticut.

## THE CONSTITUTION

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After the Annapolis Convention in September 1786—with five states attending—the 12 delegates agreed to another convention to revise the Articles of Confederation. On February 21, 1787, the Confederation Congress called for a convention of state delegates to meet in Philadelphia for the “sole and express purpose of revising the Articles.” The leading delegates had other plans—they wished to “render the federal constitution adequate to the exigencies of government and the preservation of the Union.” The Constitution was drafted in Philadelphia at the Constitutional Convention in secret between May 14, 1787, and September 17, 1787—when the final vote approved the Constitution, with three men (Elbridge Gerry, George Mason, and Edmund Randolph) refusing to sign. (Others like Luther Martin also left the Convention early.) From there, state ratifying conventions considered whether or not to accept the new Constitution, with some quickly voting to ratify and other states—like New York, Virginia, Pennsylvania, and Massachusetts—having significant opposition to the Constitution, principally for lacking a Bill of Rights and for removing too much power from the states to the central government. The Constitution was ratified on June 21, 1788, and came into effect with the first meeting of Congress on March 4, 1789.

## BILL OF RIGHTS

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[View at the National Archives](#)

During both the Constitutional Convention and the state ratifying conventions, one of the principle objections of “anti-Federalists” who opposed the Constitution was that it lacked a Bill of Rights to protect the most important rights of citizens. Bills (or Declarations) of Rights went back to the Magna Carta and the English Declaration or Bill of Rights in 1689. Early state constitutions written during the Revolution typically included such declarations of rights. George Mason wrote Virginia’s—ratified five days before the Declaration of Independence—and Mason himself was one of the leading anti-Federalists who refused to sign the Constitution because it lacked a Bill of Rights. In order to avoid a second constitutional convention, James Madison accepted the need for a Bill of Rights even though he initially objected (as other Federalists did) that a Bill of Rights was unnecessary because it implied powers given to the federal government that the Constitution clearly did not give it—like a power to regulate speech. Madison obliged, leading the creation of the Bill of Rights in the first Congress in August and September 1789. The Bill of Rights—the first 10 amendments to the U.S. Constitution—was ratified by December 15, 1791.

### *Key Take-Home Points:*

- In *Federalist #84*, Alexander Hamilton wrote: “Bills of rights are in their origin, stipulations between kings and their subjects, abridgments of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was the Magna Carta, obtained by the Barons, swords in hand, from King John.”
- Debate in Massachusetts over the Constitution was so contentious that Federalist Francis Dana and anti-Federalist Elbridge Gerry got into a fistfight. To resolve the quandary, the heroes of the Revolution and leading anti-Federalists Samuel Adams and John Hancock agreed to ratification on the condition that the convention also propose amendments. This became known as the “Massachusetts Compromise.”
- New York would not follow the Massachusetts Compromise. New York’s convention, in fact, was majority anti-Federalist and its leader, Melancton Smith, wrote the “New York Circular Letter” calling for a second convention. (By this point, enough states had ratified that the Constitution would go into effect regardless.) Smith hoped to use the Article V process to amend the Constitution and thus wanted “conditional ratification,” but John Jay and Alexander Hamilton altered the letter to support unconditional ratification in exchange for an amendment process. But only New York and Virginia made the call for a second convention, as Madison wrote the Bill of Rights partially in response to this action from the States.
- On August 24, 1789, the House of Representatives approved 17 proposed amendments, which were then sent to the Senate, who altered and consolidated them. On September

25, Congress passed 12 amendments, which were then sent to the states for ratification. Only 10 were ultimately ratified—now known as the “Bill of Rights”—but, in fact at the time, many anti-Federalists were disappointed and did not call these 10 amendments a “Bill of Rights” because they believed them to be insufficient and felt that Madison ignored their calls for *structural* amendments which would limit the powers of the national government.

## FEDERALIST #10

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[View at Teaching American History](#)

*The Federalist Papers* are well known in history, law, and political science as some of the finest works on political theory. The context in which they were written is the fight over ratification of the Constitution. When it became apparent that some states would have strong opposition to ratification and anti-Federalists began to print essays criticizing the Constitution—especially in New York and Virginia—Federalist leaders who supported ratification (James Madison, Alexander Hamilton, and John Jay) began a series of newspaper essays under the pseudonym (“Publius”). These essays were primarily printed in New York to rally support for the new Constitution. Hamilton and Madison were the primary writers.

*Key Take-Home Points:*

- Madison’s title for *Federalist* #10 is “The Utility of the Union as a Safeguard Against Domestic Faction and Insurrection,” and the essay was first published on November 22, 1787.
- Madison’s essay was a response to familiar Enlightenment arguments that republican governments could safely operate only in small, relatively homogeneous societies with citizens sharing common interests and a distinctive sense of civic virtue such that they could subordinate private interest to the public good.
- Madison believes that in larger republics factions (factions = partisan groups) will struggle to coalesce for improper purposes. As a result, larger electoral districts will work to improve representation.
- Madison seems to reject the republican belief (held by other framers) in the necessity of virtuous citizens towards individual interest, but also seems to believe in true public good that polity should strive to discover (closer to republican notion of community interest).
- Madison’s argument rests on two assumptions:
  - Majorities can constitute factions and thus threaten the public good and private rights. (He questions the fundamental principle of republic government that majorities are the safest guardians of those rights.)

- Faction is unavoidable because of human nature (“The latent causes of faction are thus sown in the nature of man”). Diverse interests in a modern civilized society—the source of faction—cannot be eliminated only controlled. This is the great benefit of republics over democracies.

## FEDERALIST #51

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### [View at Teaching American History](#)

“Separation of powers” was a critical concept in Republican theory in the 18th century—primarily coming from John Locke and Baron de Montesquieu in *The Spirit of the Laws*. Montesquieu wrote of the division of powers between the legislative, executive, and judicial powers. He believed that “[w]hen the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.” Thus, under this prevalent 18th century republican theory, separation of powers meant *complete* separation of powers, because any usurpation of powers by another branch would lead to tyranny. Madison dispensed with this logic by calling for a system of “checks and balances” alongside partial (but not complete) “separation of powers.” This was one of the unique contributions of the Constitution to republican theory.

### *Key Take-Home Points:*

- *Federalist* #51 was written by James Madison. It was titled “The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments,” and was published originally on February 8, 1788.
- The Constitution strengthens the national government over the Articles of Confederation and alters federalism.
- Key quote: “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.”

- Madison answers Montesquieu. Ambition must be made to counteract ambition because the Constitution assumes that human nature is imperfect and thus the best control is jealousy among the three branches.
- The president now enforces the law and commands military.
- Congress can levy taxes, borrow money, regulate commerce, declare war, and promote “general welfare” (elastic clause).
- The Constitution prevents states from infringing on property rights.
  - Limits on the states: No bills of attainder, “Contracts Clause,” states cannot issue paper money, impair contracts, interfere with commerce, or, as had been an issue under the Articles, levy state import/export duties.
  - States maintain their “police powers” (as they will be called) over internal governance.
  - The people themselves are the primary control on an aggrandizing government, but they need additional controls and buffers.

## FEDERALIST #70

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[View at Teaching American History](#)

The Executive Power, lodged in the presidency under the Constitution, was a key debate at the Constitutional Convention. Given the widespread opposition during the Revolution to what was seen as the tyrannical actions of King George III and his executive officials, many were opposed to too much executive power. Many state constitutions reduced executive power or controlled it through executive counsels. In *Federalist #70*, Alexander Hamilton made the case that executive power should be lodged in a single person—the president—in order to best protect liberty and guard the people.

### *Key Take-Home Points:*

- *Federalist #70* was written by Hamilton and originally titled “The Executive Department Further Considered.” It was first published on March 15, 1788.
- A unitary executive is necessary to keep accountability in government. It protected against legislative encroachment and ensured “energy” in the executive. Energy was “the leading character in the definition of good government.”
- Hamilton attacks the axiom of the time that “a vigorous executive is inconsistent with the genius of republican government.” He says it was plainly wrong because good government requires energetic administration.
- Four keys: unity, duration, competent powers, and support.
- National security also depends on energetic leadership. The executive must be unitary. A single executive in the form of the president was characterized by “decision, activity,

secrecy, and dispatch,” while also making the people safer due to the unconcealed accountability to the people of the single executive.

- Divided councils were dangerous. Unity was vital. While Madison (in *Federalist* #48) said that passions should be regulated and controlled by the government, Hamilton wanted to nurture that behavior in the executive.
- Duration meant that more time in the office—as opposed to a one- or two-year term—would make the president more responsive to the people.

## FEDERALIST #78

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[View at Teaching American History](#)

Hamilton’s essay, titled “The Judicial Department” was published May 28, 1788. In it, he defined the judiciary as the “weakest” of the three branches, but also emphasized the importance of judicial review and an independent judiciary.

*Key Take-Home Points:*

- Hamilton’s idea of judicial power followed his idea of executive power—“energy” and independence were necessary to good government.
- Life tenure for good behavior is important to keep the judiciary independent and not beholden to the legislature or executive branches, as they were under the English system.
- Courts reviewed federal acts to protect individual liberty, ensure good government, and oversee “steady, upright” administration of the law. However, the judiciary branch is the weakest: The Courts had “no influence over either the sword or the purse ... It may truly be said to have neither FORCE nor WILL, but merely judgment.”
- Hamilton emphasized the duty of the judiciary, following English ideas, to declare “all acts contrary to the manifest tenor of the Constitution void.” He noted, “The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body.”
- Key Quote: “There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid.”
- Hamilton emphasized the judiciary’s responsibility to protect and uphold individual rights.

- An independent judiciary (*e.g.*, good behavior tenure, fixed salary) provided that “inflexible and uniform adherence to the rights of the Constitution and individuals” and “essential safeguard against the effects of occasional ill humours in society.”

## BRUTUS #1

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[View at Teaching American History](#)

“Brutus” was the pseudonym of an anti-Federalist writer in New York who opposed the ratification of the Constitution. “Brutus” is believed to have been state judge and New York ratifying convention member Robert Yates, a well-known anti-Federalist. Like other anti-Federalists, “Brutus” objected to the theory of republican government proposed in the Constitution, primarily the genius of James Madison. “Brutus” believed that the Romans and Aristotle were correct to suspect that Republics could only successfully exist in small, homogenous societies.

*Key Take-Home Points:*

- “Brutus” quotes at length from Montesquieu, who likewise believed that large republics would fail: “It is natural to a republic to have only a small territory, otherwise it cannot long subsist. In a large republic there are men of large fortunes, and consequently of less moderation; there are trusts too great to be placed in any single subject; he has interest of his own; he soon begins to think that he may be happy, great and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country. In a large republic, the public good is sacrificed to a thousand views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen; abuses are of less extent, and of course are less protected.”
- The difference between free government and arbitrary, despotic government was the assent and will of the people. In despotic governments the supreme authority was lodged in one individual whose will is law, and it could be as easily expressed to a large extensive territory as to a small one, whereas in a “pure democracy,” the people are the sovereign, and their will is declared by themselves.
- Thus, “Brutus” believed it was impossible in such a large country (and republic) to have proper republican representation. Additionally, in a republic, the manners, sentiments, and interests of the people should be similar. “Brutus” also believed this was impossible in a large republic such as the one established by the Constitution. “Brutus” worried about the clashing of varied interests and factions between states because the United States had a variety of climates and manners.

- “Brutus” notes that standing armies are common to all European monarchies and despotic governments. Standing armies were inherently destructive to liberty, he said, and “abhorrent to the spirit of a republic,” as well as unconstitutional and oppressive. A free republic cannot rely upon a standing army to enforce the laws, as it must depend upon the support of its citizens and government must rest for its support upon the confidence and respect which the people have for their government and laws.
- “Brutus” says another effect is that under the Constitution in a large republic, the people would have little confidence in the legislature and would be jealous of the laws they passed instead of supporting them. As “Brutus” says, the confidence which the people have in their rulers, in a free republic, arises from knowing them and from their being responsible to them for their conduct—and being to remove them from power if they misbehave.
- With the concentration of such great powers in the hands of few under the Constitution and the problems of a larger republic, “Brutus” concluded that the representatives would become removed from the control of the people and would abuse their power to the purpose of aggrandizing themselves and oppressing the people.

#### LETTER FROM BIRMINGHAM JAIL

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[View at the University of Pennsylvania](#)

Written on April 16, 1963, Dr. Martin Luther King Jr. aimed to defend the strategy of non-violence pursued by the Southern Christian Leadership Conference (SCLC). Thirteen days earlier, the “Birmingham Campaign” of sit-ins and boycotting began. On April 10, Circuit Judge W. A. Jenkins Jr. issued a blanket injunction against “parading, demonstrating, boycotting, trespassing and picketing.” Leaders of the campaign announced they would disobey the ruling. King was arrested on April 12 along with fellow Civil Rights movement leaders Ralph Abernathy and Fred Shuttlesworth, and other marchers. It was while in jail, under brutal conditions, that King wrote this letter addressing his critics.

#### *Key Take-Home Points:*

- King said that it was dangerous to treat him and his followers as outside agitators, famously stating that, “Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly ... Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds.”
- King believed nonviolent direct action brought about “constructive tension.” Tension was intended to compel meaningful negotiation with the white power structure, without which true civil rights could never be achieved. King argued that black leaders drew on experience: “We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.”

- King took issue with the notion of inevitable progress towards equal rights. African Americans had waited and suffered long enough asking for protection of their God-given natural and constitutional rights: “Perhaps it is easy for those who have never felt the stinging darts of segregation to say, ‘Wait.’”
- Henry David Thoreau famously argued for principles of “Civil Disobedience” and ignoring immoral laws. King believes this too, pointing to St. Augustine and Thomas Aquinas, saying, “[S]ubmit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.”
- According to St. Augustine, there was a moral responsibility to ignore unjust laws, for, “an unjust law is no law at all.” King looks to history, both to observe the Biblical story of disobeying the laws of Nebuchadnezzar and that everything Hitler did in Nazi Germany was “legal.” Turning to the present situation, King said that segregation laws were immoral and unjust “because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority and the segregated a false sense of inferiority.”
- King did not necessarily see the Civil Rights movement as extreme, but rather moderate compared to other similar social movements. Yet, he also recognizes that Jesus and other great reformers in history were extremists—including Martin Luther, Thomas Jefferson, and Abraham Lincoln. King quotes from the Declaration of Independence and “House Divided” speech. And he asks: “So the question is not whether we will be extremists, but what kind of extremists we will be. Will we be extremists for hate or for love?” As he also reminds his audience, oppressed people cannot remain oppressed forever and the “urge for freedom will come eventually.”
- King also took aim at white moderates and black nationalists as being dangerous, saying that Elijah Muhammed and his followers wrongly treated whites as the devil and rejected Christianity. To white moderates, King wrote that, “I should have realized that few members of a race that has oppressed another race can understand or appreciate the deep groans and passionate yearnings of those that have been oppressed, and still fewer have the vision to see that injustice must be rooted out by strong, persistent, and determined action.” These moderates, King felt, impeded the path towards justice and freedom by not recognizing the righteous cause of the Civil Rights movement.

*\*Research provided by Nicholas Mosvick, Senior Fellow for Constitutional Content and Thomas Donnelly, Senior Fellow for Constitutional Studies, at the National Constitution Center.*