

# Did the Constitution Establish a Just Government?



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## Supporting Questions

1. Why did the framers of the United States Constitution believe a new document was necessary?
2. How did the Constitution structure the government?
3. How did the framers protect slavery in the Constitution?
4. How democratic was the 1787 Constitution?

## High School Constitution Inquiry

### Did the Constitution Establish a Just Government?

<b>Framework for Teaching American Slavery</b>	<b>Summary Objective 7:</b> Demonstrate the ways that the Constitution provided direct and indirect protection to slavery and imbued enslavers and the slave states with increased political power.
<b>Staging the Question</b>	Read the preamble to the Constitution and discuss how a government could achieve the goals it establishes.

Supporting Question 1	Supporting Question 2	Supporting Question 3	Supporting Question 4
Why did the framers of the United States Constitution feel a new document was necessary?	How did the Constitution structure the government?	How did the framers protect slavery in the Constitution?	How democratic was the 1787 Constitution?
<b>Formative Performance Task</b>	<b>Formative Performance Task</b>	<b>Formative Performance Task</b>	<b>Formative Performance Task</b>
Generate a list of concerns that led to the creation of a new government through the Constitution.	Create a graphic organizer that illustrates the branches of the federal government and their functions.	Write a paragraph using evidence to explain how the framers protected slavery in the Constitution.	Develop a claim supported by evidence that explains the degree to which the 1787 Constitution is a democratic document.
<b>Featured Sources</b>	<b>Featured Sources</b>	<b>Featured Sources</b>	<b>Featured Sources</b>
<p><b>Source A:</b> Letter to James Duane from Alexander Hamilton, Excerpt (1780).</p> <p><b>Source B:</b> Letter to James Warren from George Washington, Excerpt (1785).</p> <p><b>Source C:</b> Letter to Thomas Jefferson from John Jay (1786).</p>	<p><b>Source A:</b> Selections from the Constitution (Art. 1, Sec. 7-9; Art. 2, Sec. 2-3; Art. 3, Sec. 2) (1787).</p> <p><b>Source B:</b> <i>The Federalist No. 51</i> by James Madison or Alexander Hamilton, Excerpt (1788).</p>	<p><b>Source A:</b> Selections from the Constitution (Art. 1, Sec. 2, Clause 3; Art. 1, Sec. 9, Clause 1; Art. 4, Sec.2, Clause 3) (1787).</p> <p><b>Source B:</b> <i>Notes of Debates in the Federal Convention of 1787</i> by James Madison, Excerpt.</p> <p><b>Source C:</b> Speech by Benjamin Franklin, Excerpt (1787).</p>	<p><b>Source A:</b> Selections from the Constitution (Art. 1, Sec. 2; Art. 2, Sec. 1-2; Art. 4, Sec. 4; Art. 5; Art. 6) (1787).</p> <p><b>Source B:</b> <i>Notes of Debates in the Federal Convention of 1787</i> by James Madison, Excerpt.</p> <p><b>Source C:</b> <i>The Federalist No. 43</i> by James Madison, Excerpt (1788).</p>

<b>Summative Performance Task</b>	<p><b>ARGUMENT</b> Did the Constitution establish a just government? Construct an argument (e.g., detailed outline, poster or essay) that addresses the compelling question using specific claims and relevant evidence from historical sources while acknowledging competing views.</p> <p><b>EXTENSION</b> Examine political cartoons developed during the ratification debates and create your own political cartoons that praise or deride the justness of the proposed Constitution.</p>
<b>Taking Informed Action</b>	<p><b>UNDERSTAND</b> Research efforts to use the amendment process to make the Constitution more just.</p> <p><b>ASSESS</b> Evaluate the extent to which a proposed or unratified amendment (e.g., the Equal Rights Amendment) could have contributed to a more just Constitution.</p> <p><b>ACT</b> Select a proposed amendment that would make the Constitution more just and contact an individual or organization promoting that amendment to find out ways to advocate for it.</p>

## Overview

### Inquiry Description

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The goal of this inquiry is for students to gain an informed, critical perspective on the United States Constitution as it stood at the conclusion of the Constitutional Convention of 1787. Investigating the justness of the document, students examine how the Constitution structures the government, the Constitution's relationship to slavery and the extent to which the amendment process makes the Constitution more democratic. By taking a critical look at the Constitution, students should better understand the government it established and develop an evidence-based perspective that serves as a launching pad for taking informed action.

### Structure of the Inquiry

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In addressing the compelling question, "Did the Constitution Establish a Just Government?" students work through a series of supporting questions, formative performance tasks and featured sources in order to construct an argument supported by evidence and counterevidence from a variety of sources.

### Length of the Inquiry

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This inquiry is designed to take three to five 40-minute class periods. Inquiries are not scripts, so you are encouraged to modify and adapt them to meet the needs and interests of your students. The inquiry time frame could expand if you think your students need additional instructional experiences (i.e., supporting questions, formative performance tasks and featured sources). Resources should be modified as necessary to meet individualized education programs (IEPs) or Section 504 Plans for students with disabilities.

## Staging the Compelling Question: Did the Constitution establish a just government?

Compelling Question	Did the Constitution establish a just government?
Featured Source	The Preamble to the Constitution

**THIS INQUIRY OPENS WITH THE QUESTION, “Did the Constitution establish a just government?”**

**THE FEATURED SOURCE** for staging the compelling question is one that students will already be familiar with—the Preamble to the Constitution. To prepare students for the inquiry, you might ask them to read the preamble carefully, with an eye to its ambition. What would it actually take for a government to achieve each of the goals listed there? In particular, you will want to provide space for students to define what it means for a government to be “just” or “democratic.”

Finally, you could use this discussion to direct students to consider the circumstances that influenced the writing of the Constitution, and the factors that might affect how the Constitution was assessed in 1787 and how it can be assessed today.

## Staging the Compelling Question: Did the Constitution establish a just government?

Featured Source	The Preamble to the Constitution. Available through the Library of Congress.
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**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.**

## Supporting Question 1: Why did the framers of the U.S. Constitution believe a new document was necessary?

<b>Supporting Question</b>	<b>Why did the framers of the U.S. Constitution believe a new document was necessary?</b>
<b>Formative Performance Task</b>	Generate a list of concerns that led to the creation of a new government through the Constitution.
<b>Featured Sources</b>	<p><b>Source A:</b> Letter to James Duane from Alexander Hamilton, Excerpt (1780).</p> <p><b>Source B:</b> Letter to James Warren from George Washington, Excerpt (1785).</p> <p><b>Source C:</b> Letter to Thomas Jefferson from John Jay (1786).</p>

**THE FIRST SUPPORTING QUESTION**—“Why did the framers of the United States Constitution believe a new document was necessary?”—helps students establish a foundational understanding of the factors that necessitated and influenced the creation of a new government and the writing of the Constitution. Students draw this information from the featured sources: personal correspondence written by individuals who became powerful advocates for the Constitution including Alexander Hamilton, George Washington and John Jay. Each letter provides insight into the social, economic and political concerns that ultimately drove the framers to develop an entirely new governing document.

**FEATURED SOURCE A** is a 1780 letter from Alexander Hamilton to James Duane, a delegate of the Continental Congress. In the excerpt provided, Hamilton describes an imbalance of power between the federal and state governments before the adoption of the new U.S. Constitution.

**FEATURED SOURCE B** is a 1785 letter from George Washington to James Warren, President of the Massachusetts Provincial Congress. In the letter, Washington explains why he believes that a strong central government will be necessary to regulate trade with other nations.

**FEATURED SOURCE C** is a 1786 letter from John Jay, then Governor of New York, to Thomas Jefferson. In this excerpt, Jay argues that the current government is not working.

**THE FORMATIVE PERFORMANCE TASK** calls on students to use these documents to identify a list of concerns that prompted the Constitutional Convention.

## Supporting Question 1: Why did the framers of the U.S. Constitution feel a new document was necessary?

### Featured Source

**Source A:** [Letter to James Duane from Alexander Hamilton](#), Excerpt (1780). Available in Philip B. Kurland and Ralph Lerner, eds. *The Founders' Constitution*. Chicago: University of Chicago Press, 1987.

*Introduction: In this excerpt from a September 1780 letter to James Duane, a delegate to the Continental Congress, Hamilton describes the imbalance of power between state and federal governments.*

The fundamental defect is a want of power in Congress. It is hardly worth while to show in what this consists, as it seems to be universally acknowledged, or to point out how it has happened, as the only question is how to remedy it. It may however be said that it has originated from three causes—an excess of the spirit of liberty which has made the particular states show a jealousy of all power not in their own hands; and this jealousy has led them to exercise a right of judging in the last resort of the measures recommended by Congress, and of acting according to their own opinions of their propriety or necessity, a diffidence in Congress of their own powers, by which they have been timid and indecisive in their resolutions, constantly making concessions to the states, till they have scarcely left themselves the shadow of power; a want of sufficient means at their disposal to answer the public exigencies and of vigor to draw forth those means; which have occasioned them to depend on the states individually to fulfil their engagements with the army, and the consequence of which has been to ruin their influence and credit with the army, to establish its dependence on each state separately rather than *on them*, that is rather than on the whole collectively. ...

But the confederation itself is defective and requires to be altered; it is neither fit for war, nor peace. The idea of an uncontrollable sovereignty in each state, over its internal police, will defeat the other powers given to Congress, and make our union feeble and precarious. There are instances without number, where acts necessary for the general good, and which rise out of the powers given to Congress must interfere with the internal police of the states, and there are as many instances in which the particular states by arrangements of internal police can effectually though indirectly counteract the arrangements of Congress. You have already had examples of this for which I refer you to your own memory. ...

The confederation too gives the power of the purse too entirely to the state legislatures. It should provide perpetual funds in the disposal of Congress—by a land tax, poll tax, or the like. All imposts upon commerce ought to be laid by Congress and appropriated to their use, for without certain revenues, a government can have no power; that power, which holds the purse strings absolutely, must rule. This seems to be a medium, which without making Congress altogether independent will tend to give reality to its authority. ...

Another defect in our system is want of method and energy in the administration. This has partly resulted from the other defect, but in a great degree from prejudice and the want of a proper executive. Congress have kept the power too much into their own hands and have meddled too much with details of every sort. Congress is properly a deliberative corps and it forgets itself when it attempts to play the executive. It is impossible such a body, numerous as it is, constantly fluctuating, can ever act with sufficient decision, or with system.

## Supporting Question 1: Why did the framers of the U.S. Constitution feel a new document was necessary?

### Featured Source

**Source B:** [Letter to James Warren from George Washington](#), Excerpt (1785). Available in *The Founders' Constitution*.

*Introduction: In this excerpt from an October 1785 letter to James Warren (the President of the Massachusetts Provincial Congress), George Washington describes the need for a unifying central government.*

The war, as you have very justly observed, has terminated most advantageously for America, and a fair field is presented to our view; but I confess to you freely, My Dr. Sir, that I do not think we possess wisdom or Justice enough to cultivate it properly. Illiberality, Jealousy, and local policy mix too much in all our public councils for the good government of the Union. In a word, the confederation appears to me to be little more than a shadow without the substance; and Congress a nugatory body, their ordinances being little attended to. To *me*, it is a solecism in politics; indeed it is one of the most extraordinary things in nature, that we should confederate as a Nation, and yet be afraid to give the rulers of that nation, who are the creatures of our making, appointed for a limited and short duration, and who are amenable for every action, and recallable at any moment, and are subject to all the evils which they may be instrumental in producing, sufficient powers to order and direct the affairs of the same. By such policy as this the wheels of Government are clogged, and our brightest prospects, and that high expectation which was entertained of us by the wondering world, are turned into astonishment; and from the high ground on which we stood, we are descending into the vale of confusion and darkness.

That we have it in our power to become one of the most respectable Nations upon Earth, admits, in my humble opinion, of no doubt; if we would but pursue a wise, just, and liberal policy towards one another, and would keep good faith with the rest of the World: that our resources are ample and increasing, none can deny; but while they are grudgingly applied, or not applied at all, we give a vital stab to public faith, and shall sink, in the eyes of Europe, into contempt.

It has long been a speculative question among Philosophers and wise men, whether foreign Commerce is of real advantage to any Country; that is, whether the luxury, effeminacy, and corruptions which are introduced along with it; are counterbalanced by the convenience and wealth which it brings with it; but the decision of this question is of very little importance to us: we have abundant reason to be convinced, that the spirit for Trade which pervades these States is not to be restrained; it behooves us then to establish just principles; and this, any more than other matters of national concern, cannot be done by thirteen heads differently constructed and organized. The necessity, therefore, of a controlling power is obvious; and why it should be withheld is beyond my comprehension.

## Supporting Question 1: Why did the framers of the U.S. Constitution feel a new document was necessary?

### Featured Source

**Source C:** [Letter to Thomas Jefferson from John Jay \(1786\)](#). Available in *The Founders' Constitution*.

*Introduction: In this October 1786 letter to Thomas Jefferson, John Jay details problems with the government that has been established under the Articles of Confederation.*

The inefficacy of our government becomes daily more and more apparent. Our treasury and our credit are in a sad situation; and it is probable that either the wisdom or the passions of the people will produce changes. A spirit of licentiousness has infected Massachusetts, which appears more formidable than some at first apprehended. Whether similar symptoms will not soon mark a like disease in several other States is very problematical.

The public papers herewith sent contain everything generally known about these matters. A reluctance to taxes, an impatience of government, a rage for property and little regard to the means of acquiring it, together with a desire of equality in all things, seem to actuate the mass of those who are uneasy in their circumstances. To these may be added the influence of ambitious adventurers, and the speculations of the many characters who prefer private to public good, and of others who expect to gain more from wrecks made by tempests than from the produce of patient and honest industry. As the knaves and fools of this world are forever in alliance, it is easy to perceive how much vigor and wisdom a government, from its construction and administration, should possess, in order to repress the evils which naturally flow from such copious sources of injustice and evil.

Much, I think, is to be feared from the sentiments which such a state of things is calculated to infuse into the minds of the rational and well-intended. In their eyes, the charms of liberty will daily fade; and in seeking for peace and security, they will too naturally turn towards systems in direct opposition to those which oppress and disquiet them.

If faction should long bear down law and government, tyranny may raise its head, or the more sober part of the people may even think of a king.

In short, my dear sir, we are in a very unpleasant situation. Changes are necessary; but, what they ought to be, what they will be, and how and when to be produced, are arduous questions. I feel for the cause of liberty, and for the honor of my countrymen who have so nobly asserted it, and who, at present, so abuse its blessings. If it should not take root in this soil, little pains will be taken to cultivate it in any other.

## Supporting Question 2: How did the Constitution structure the government?

<b>Supporting Question</b>	<b>How did the Constitution structure the government?</b>
<b>Formative Performance Task</b>	Create a graphic organizer that illustrates the branches of the federal government and their functions.
<b>Featured Sources</b>	<b>Source A:</b> Selections from the Constitution (Article 1, Sections 7-9; Article 2, Sections 2-3; Article 3, Section 2) (1787). <b>Source B:</b> <i>The Federalist No. 51</i> , by James Madison or Alexander Hamilton, Excerpt (1788).

**THE SECOND SUPPORTING QUESTION**—“How did the Constitution structure the government?”—invites students to focus on the government the framers created and the ways it was intended to function. Building on their understanding of why the framers believed a new document was necessary, students examine how the framers addressed their concerns.

**FEATURED SOURCE A** includes selections from Articles 1, 2 and 3 of the U.S. Constitution outlining the powers of each of the three branches of government.

**FEATURED SOURCE B** is an excerpt from *The Federalist No. 51* written by either Madison or Hamilton under the pseudonym Publius and arguing for the separation of powers.

**THE SECOND FORMATIVE PERFORMANCE TASK**, which asks students to create a graphic organizer that illustrates the branches of federal government and their functions, helps students build the content knowledge foundational to any argument about the Constitution.

## Supporting Question 2: How did the Constitution structure the government?

### Featured Source

**Source A:** Selections from [the Constitution](#) (Article I, Sections 7-9; Article 2, Sections 2-3; and Article 3, Section 2) (1787). Available through the National Archives.

## ARTICLE I

### Section 7

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

### 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;

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 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.

## **Section 9**

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

## ARTICLE II

### Section 2

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

### Section 3

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

## ARTICLE III

### Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

## Supporting Question 2: How did the Constitution structure the government?

### Featured Source

**Source B:** *The Federalist No. 51* by James Madison or Alexander Hamilton, Excerpt (1789). Available through the Library of Congress.

*Introduction: In this excerpt from The Federalist No. 51, the author (either James Madison or Alexander Hamilton, writing under the pseudonym Publius) argues the importance of the balance of powers between branches of government.*

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.

A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

## Supporting Question 3: How did the framers protect slavery in the Constitution?

<b>Supporting Question</b>	<b>How did the framers protect slavery in the Constitution?</b>
<b>Formative Performance Task</b>	Write a paragraph using evidence to explain how the framers protected slavery in the Constitution.
<b>Featured Sources</b>	<p><b>Source A:</b> Selections from the Constitution (Article 1, Section 2, Clause 3; Article 1, Section 9, Clause 1; and Article 4, Section 2, Clause 3) (1787).</p> <p><b>Source B:</b> <i>Notes of Debates in the Federal Convention of 1787</i> by James Madison, Excerpt.</p> <p><b>Source C:</b> Speech by Benjamin Franklin, Excerpt (1787).</p>

**THE THIRD SUPPORTING QUESTION**—“How did the framers protect slavery in the Constitution?”—brings a spotlight to the issue of slavery and calls on students to grapple with the document’s justness and the compromise over slavery.

**FEATURED SOURCE A** consists of passages where the Constitution directly addresses the question of slavery. These include the three-fifths clause, the slave trade clause prohibiting Congress from banning the international slave trade before 1808, and the fugitive slave clause requiring that people who escaped enslavement be returned to their enslavers even if they had fled to another state.

**FEATURED SOURCE B** is an excerpt of Madison’s notes on the Federal Convention. In this source, he records a debate over the three-fifths clause.

**FEATURED SOURCE C** is also drawn from Madison’s notes. This is a speech by Franklin in which he promotes the strengths of the Constitution.

**THE THIRD FORMATIVE PERFORMANCE TASK** requires students to write a paragraph explaining how the framers protected slavery within the Constitution.

## Supporting Question 3: How did the framers protect slavery in the Constitution?

### Featured Source

**Source A:** Selections from [the Constitution](#) (Article I, Section 2, Clause 3; Article I, Section 9, Clause 1; and Article 4, Section 2, Clause 3) (1787). Available through the National Archives.

### ARTICLE I

#### Section 2, Clause 3

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

#### Section 9, Clause 1

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

### ARTICLE IV

#### Section 2, Clause 3

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

## Supporting Question 3: How did the framers protect slavery in the Constitution?

### Featured Source

**Source B:** [Notes on the Debates in the Federal Convention of 1787](#) by James Madison, Excerpt. Available through The Avalon Project at Yale Law School.

*Introduction: In this section of Madison's Notes, he records a debate at the Constitutional Convention on August 21, 1787. In this excerpt, he provides the discussion about the taxes that would be levied on slavers and others who imported enslaved people.*

Mr. L MARTIN proposed to vary the Sect: 4. Art VII so as to allow a prohibition or tax on the importation of slaves. In the first place, as five slaves are to be counted as three freemen, in the apportionment of Representatives, such a clause would leave an encouragement to this traffic. In the second place, slaves weakened one part of the Union, which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. And in the third place, it was

inconsistent with the principles of the Revolution, and dishonorable to the American character, to have such a feature in the Constitution.

Mr. RUTLIDGE did not see how the importation of slaves could be encouraged by this section. ... Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is, whether the Southern States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of Slaves, which will increase the commodities of which they will become the carriers.

Mr. ELSEWORTH was for leaving the clause as it stands. Let every State import what it pleases. The morality or wisdom of slavery are considerations belonging to the States themselves. What enriches a part enriches the whole, and the States are the best judges of their particular interest. The old confederation had not meddled with this point, and he did not see any greater necessity for bringing it within the policy of the new one.

Mr. PINCKNEY. South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of the Congress, that State has expressly and watchfully excepted that of meddling with the importation of negroes.

### Supporting Question 3: How did the framers protect slavery in the Constitution?

#### Featured Source

**Source C:** [Speech by Benjamin Franklin](#), Excerpt (1787). Recorded in *Notes on the Debates in the Federal Convention of 1787* by James Madison and available through The Avalon Project at Yale Law School.

*Introduction: In this speech, which Benjamin Franklin gave to the assembled delegates of the Constitutional Convention on September 17, 1787, he promotes the strengths of the new U.S. Constitution.*

I confess that there are several parts of this constitution which I do not at present approve, but I am not sure I shall never approve them. For having lived long, I have experienced many instances of being obliged by better information, or fuller consideration, to change opinions even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men, indeed, as well as most sects in religion, think themselves in possession of all truth, and that wherever others differ from them, it is so far error.

[...] In these sentiments, Sir, I agree to this Constitution, with all its faults, ... I doubt too whether any other Convention we can obtain may be able to make a better Constitution. For, when you assemble a number of men to have the advantage of their joint wisdom you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; ... Thus I consent, Sir, to this Constitution, because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors, I sacrifice to the public good. ... Much of the strength and efficiency of any Government in procuring and securing happiness to the people depends, on opinion, — on the general opinion of the goodness of the Government, as well as of the wisdom and integrity of its Governors. I hope, therefore, that for our own sakes as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress and confirmed by the Conventions) wherever our influence may extend, and turn our future thoughts and endeavors to the means of having it well administered.

## Supporting Question 4: How democratic was the 1787 Constitution?

<b>Supporting Question</b>	<b>How democratic was the 1787 Constitution?</b>
<b>Formative Performance Task</b>	Develop a claim supported by evidence that explains the degree to which the 1787 Constitution is a democratic document.
<b>Featured Sources</b>	<p><b>Source A:</b> Selections from the Constitution (Article 1, Section 2; Article 2, Sections 1-2; Article 4, Section 4; Article 5; and Article 7) (1787).</p> <p><b>Source B:</b> <i>Notes of Debates in the Federal Convention of 1787</i> by James Madison, Excerpt.</p> <p><b>Source C:</b> <i>The Federalist No. 43</i> by James Madison, Excerpt (1788).</p>

**THE FOURTH SUPPORTING QUESTION**—“How democratic was the 1787 Constitution?”—directs students toward additional questions, such as the necessity of representation, they can use to consider the justness of the Constitution.

**FEATURED SOURCE A** is a set of selections from the Constitution which discuss representation. These sections include Article 5, which allows for amendments.

**FEATURED SOURCE B** is drawn from Madison’s *Notes of Debates in the Federal Convention*, and it chronicles the debate over how the legislative and executive branches might be elected.

**FEATURED SOURCE C** is an excerpt from *The Federalist No. 43* in which Madison explains why the new Constitution included a process for amendment.

**FOR THE FOURTH FORMATIVE PERFORMANCE TASK**, students develop a claim supported by evidence about the degree to which the 1787 Constitution is a democratic document.

## Supporting Question 4: How democratic was the 1787 Constitution?

### Featured Source

**Source A:** Selections from [the Constitution](#) (Article I, Section 2; Article 2, Sections 1-2; Article 4, Section 4; Article 5; Article 7) (1787). Available through the National Archives.

### ARTICLE I

#### Section 2

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States. . . .

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.

#### Section 3

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

### ARTICLE II

#### Section 1

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot...The Person having the greatest Number of Votes shall be the President...

#### Section 2

[...The President] shall have Power, by and with the Advice and Consent of the Senate, to...appoint Ambassadors, other public Ministers and Councils, Judges of the supreme Court...

### ARTICLE IV

#### Section 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.

### ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for

proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

## ARTICLE VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

### Supporting Question 4: How democratic was the 1787 Constitution?

#### Featured Source

**Source B:** *Notes on the Debates in the Federal Convention of 1787* by James Madison, Excerpts. Accessed through The Avalon Project at Yale Law School.

*Introduction: In these notes from May and July of 1787, Madison describes the delegates' debate over how members of the legislature—and the head of the executive branch—should be elected.*

#### PASSAGE 1

*Monday May 31, 1787: Debating the election of the Legislative Branch*

Mr. SHERMAN opposed the election [of the legislature] by the people, insisting that it ought to be by the State Legislatures. The people he said, immediately should have as little to do as may be about the Government. They want information and are constantly liable to be misled.

Mr. GERRY. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Massachusetts it had been fully confirmed by experience that they are daily misled into the most baneful measures and opinions, by the false reports circulated by designing men, and which no one on the spot can refute. ...

Mr. MASON, argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the [government]. It was, so to speak, to be our House of Commons—It ought to know and sympathize with every part of the community; and ought therefore to be taken, not only from different parts of the whole republic, but also from different districts of the larger members of it, which had in several instances particularly in [Virginia], different interests and views arising from difference of produce, of habits, &c., &c. He admitted that we had been too democratic, but was afraid we [should] incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity and policy; considering that however affluent their circumstances, or elevated their situations, might be, the course of a few years not only might, but certainly would, distribute their posterity throughout the lowest classes of Society. Every selfish motive, therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest, than of the highest orders of Citizens.

Mr. WILSON contended strenuously for drawing the most numerous branch of the Legislature immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican government, this confidence was peculiarly essential. . . .

Mr. MADISON considered the popular election of one branch of the National Legislature as essential to every plan of free government. . . . He thought, too, that the great fabric to be raised would be more stable and durable, if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the Legislatures.

## PASSAGE 2

*Tuesday July 17, 1787: Debating the Election of the Executive*

[...] Mr. GOVERNOR MORRIS. was pointedly [against the president] being so chosen [by Congress]. He will be the mere creature of the [Legislature] if appointed and impeachable by that body. He ought to be elected by the people at large, by the freeholders of the country. That difficulties attend this mode, he admits. But they have been found superable in [New York] and in [Connecticut] and would he believed be found so, in the case of an Executive for the [United] States. If the people should elect, they will never fail to prefer some man of distinguished character, or services; some man, if he might so speak, of continental reputation—If the Legislature elect, it will be the work of intrigue, of cabal, and of faction; it will be like the election of a pope by a conclave of cardinals; real merit will rarely be the title to the appointment. . . .

Mr. SHERMAN thought that the sense of the Nation would be better expressed by the Legislature, than by the people at large. The latter will never be sufficiently informed of characters, and besides will never give a majority of votes to any one man. They will generally vote for some man in their own State, and the largest State will have the best chance for the appointment. . . .

Mr. PINCKNEY did not expect this question would again have been brought forward; An Election by the people being liable to the most obvious and striking objections. They will be led by a few active and designing men. The most populous States by combining in favor of the same individual will be able to carry their points. The [national] Legislature being most immediately interested in the laws made by themselves, will be most attentive to the choice of a fit man to carry them properly into execution.

### Supporting Question 4: How democratic was the 1787 Constitution?

#### Featured Source

**Source C:** *The Federalist No. 43* by James Madison, Excerpt (1788). Available through the Library of Congress.

*Introduction: In this excerpt from The Federalist No. 43, James Madison explains how the new constitution could be amended.*

That useful alterations will be suggested by experience, could not but be foreseen. It was requisite, therefore, that a mode for introducing them should be provided. The mode preferred by the convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults. It, moreover, equally enables the general and the state governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other.

## Summative Performance Task

<b>Compelling Question</b>	<b>Did the Constitution establish a just government?</b>
<b>Summative Performance Task</b>	Did the Constitution establish a just government? Construct an argument (e.g., detailed outline, poster or essay) that addresses the compelling question using specific claims and relevant evidence from historical sources while acknowledging competing views.

### ARGUMENT

At this point in the inquiry, students have examined the concerns that prompted the creation of the U.S. Constitution, the structure of the government delineated in the Constitution, the historical and contemporary debates over the Constitution’s relationship to slavery and the question of the extent to which the Constitution should be considered democratic.

Students should be able to demonstrate the breadth of their understanding and their ability to use evidence from multiple sources to support their claims. In this task, students construct an evidence-based argument responding to the compelling question “Did the Constitution create a just government?” Students’ arguments could take a variety of forms, including a detailed outline, poster, or essay.

Students’ arguments will likely vary, but could include any of the following:

- Despite the inclusion of slavery, which reflects compromises with slavery advocates in exchange for their support, the framers created a just Constitution because its system of checks and balances ensured that no one would have too much power in the government.
- Even though there were positive aspects of the Constitution, the government it created was unjust because it greatly limited democracy and protected slavery.
- Although imperfect, the Constitution created a just government because the amendment process provided an effective way to improve the government.

### EXTENSION

Students could extend these arguments by reading additional Federalist and Anti-Federalist papers created during the ratification debate: *The Federalist No. 10* and “Essays of Brutus No. 3” are recommended. Students can then develop political cartoons or position papers that focus on the perceived justness of the Constitution in response to these two arguments.

## Taking Informed Action

### Taking Informed Action

**UNDERSTAND** Research efforts to use the amendment process to make the Constitution more just.

**ASSESS** Evaluate the extent to which a proposed or unratified amendment (e.g., the Equal Rights Amendment) could have contributed to a more just Constitution.

**ACT** Select a proposed amendment that would make the Constitution more just and contact an individual or organization promoting that amendment to find out ways to advocate for it.

Students have the opportunity to take informed action by drawing on their knowledge of the writing and amending of the Constitution. They demonstrate their ability to understand by researching amendments to the Constitution. They show their ability to assess by analyzing how an unsuccessful amendment could have made the Constitution more just. And they act by seeking out opportunities to participate in the promotion of an amendment they believe would make the Constitution more just.