

Did the founders want government to work?



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Supporting Questions

1. What were the purposes of the Necessary and Proper Clause?
2. In what ways does the separation of powers limit government power?
3. How do factions and personal liberties affect the functioning of government?

9-12 Grade Teaching with Primary Sources Hub Founders and Government Inquiry
by C3 Teachers Development

Did the founders want government to work?

Inquiry Standard	D2.Civ.4.9-12. Explain how the U.S. Constitution establishes a system of government that has powers, responsibilities, and limits that have changed over time and that are still contested.
Staging the Compelling Question	Discuss the productivity of the most recent session of the United States Congress.

Supporting Question 1	Supporting Question 2	Supporting Question 3
What were the purposes of the Necessary and Proper Clause?	In what ways does the separation of powers limit government power?	How do factions and personal liberties affect the functioning of government?
Formative Performance Task	Formative Performance Task	Formative Performance Task
Create a chart with evidence from the sources illustrating the different ways the founders thought about the Necessary and Proper Clause.	Make a T-chart that compares arguments about how the Separation of Powers limits or does not limit government power.	Write a brief paragraph that infers from the sources about whether factions and personal liberties are compatible.
Featured Sources	Featured Sources	Featured Sources
Source A: Federalist paper #33 (excerpt) Source B: Marshall Decision on McCulloch v Maryland – 1819 (excerpt) Source C: James Madison to Spencer Roane, September 2, 1819 (excerpt)	Source A: Federalist paper #48 (excerpt) Source B: Federalist paper #51 (excerpt)	Source A: Federalist paper #10 (excerpt) Source B: Anti-Federalist #84: “On the Lack of a Bill of Rights” (excerpt)

Summative Performance Task	ARGUMENT In this task, students will write an essay (or produce an alternative product) answering the compelling question – Did the founders want government to work?
	EXTENSION Make a speech on how the government is currently functioning or dtysfunctioning.
Taking Informed Action	<p>UNDERSTAND Identify an issue where the United States Congress has failed to take action and determine consequences of that failure to take action.</p> <p>ASSESS Students will determine the extent to which the issue has failed to take action, determine consequences of that failure to take action, and recommend revisions for success.</p> <p>ACTION Findings of the issue's failure to take action and its consequences as well as recommended revisions will be shared by writing a letter to a member of the United States Congress.</p>

Inquiry Description

In a contentious political climate, it can be difficult for the federal government to get much done. The machinery of government—executive power, checks and balances, separation of powers—seems to work against itself, and political parties are left blaming each other for leaving important work undone, or alternately, claiming credit for hampering legislation they feel is harmful to their constituents. Is the government functioning—or dysfunctioning? The answer is not immediately clear. The US Constitution includes some provisions that give the federal government broad powers, such as the Necessary and Proper Clause and the executive authority of the president. It also has provisions that are intended to limit the scope of what government can accomplish, such as checks and balances and the separation of powers. The Compelling Question for this inquiry asks, “Did the founders want government to work?” This question reflects the tensions that existed during the debate over the proper role of government.

For some, that will be the number of laws that are passed. Others might think of government working when individual liberties are protected. Sometimes the measure of ‘working’ will be a judgment that arises from a current political issue: those who favor government action on health care would say government works when it is able to provide health insurance to those who cannot afford it, while others will say that government is not working when it provides access to health because it drives up the cost of health insurance for others.

Structure

This inquiry integrates skills from the Common Core and the C3 Framework into social studies instruction. It draws upon historical sources from the Library of Congress and culminates in an argumentative essay. The instructional ideas in this inquiry follow the Literacy Design Collaborative task-based approach. By completing this inquiry, students will build their social studies content knowledge as well as their reading, writing, and inquiry skills.

This inquiry includes information to support teachers as they implement the instructional ideas in their classroom. The full instructional inquiry should take 120-150 minutes. The guidance within this document is general in form, but includes specific information about historical sources, tools to support document analysis, approaches to assessment, and relevant Common Core standards and C3 Framework indicators. The instructional sequence in this inquiry includes three parts.

- Introduce the compelling question and content background
- Address the supporting questions and complete in sequence the formative performance tasks
- Complete the summative performance tasks

In addition, this inquiry includes the excerpts from historical sources needed for the lesson and listing of specific tools for historical thinking.

Staging the Compelling Question

Compelling
Question

Did the founders want government to work?

Staging the compelling question

Students will discuss the productivity of the most recent session of the United States Congress.

Possible questions to consider:

- What topics were addressed?
- What was accomplished?
- What was unresolved?

Supporting Question 1

Supporting Question	What were the purposes of the Necessary and Proper Clause?
Formative Performance Task	Create a chart with evidence from the sources illustrating the different ways the founders thought about the Necessary and Proper Clause.
Featured Sources	<ul style="list-style-type: none">● Source A: Federalist paper #33 (excerpt)● Source B: Marshall Decision on McCulloch v Maryland – 1819 (excerpt)● Source C: James Madison to Spencer Roane, September 2, 1819 (excerpt)

The Necessary and Proper Clause (also known as the Elastic Clause) is a one sentence statement in Article One of the Constitution (section 8, clause 18) that sets forth the idea that Congress should be able to make all the laws needed to carry the specific legislative powers that are stipulated in Article One.

The three sources for this supporting question include excerpts from Federalist Paper #33, John Marshal’s decision in McCulloch v. Maryland, and a 1819 letter from James Madison to Spencer Roane. Federalist Paper #33 puts forward a defense of the Necessary and Proper Clause based on reasoning that Congress would assume the legislative power to enact the explicit powers listed in Article One whether the clause had been included or not. The Marshall decision extended the implied powers of Congress suggested in the Necessary and Proper Clause. Madison made the point in his letter that the Marshall Court’s decision was too far reaching. Students should read all three excerpts and record information from the sources that helps them understand the purposes of the Necessary and Proper Clause. Those purposes may be conflicting. For example, Madison and Marshall did not agree on the implications of the clause.

Formative Performance Task

The formative performance task is to create a chart with evidence from the that explains the different ways that the founders thought about the Necessary and Proper Clause. To accomplish this task, students will need to pull information from the sources given specific purposes.

Supporting Question 1

Featured Source A

Federalist paper #33 (excerpt)

Excerpt

The Same Subject Continued: Concerning the General Power of Taxation January 3, 1788

From the *Daily Advertiser*

January 3, 1788

Author: Alexander Hamilton (Publius)

To the People of the State of New York:

The residue of the argument against the provisions of the Constitution in respect to taxation is ingrafted upon the following clause. The last clause of the eighth section of the first article of the plan under consideration authorizes the national legislature “to make all laws which shall be NECESSARY and PROPER for carrying into execution THE POWERS by that Constitution vested in the government of the United States, or in any department or officer thereof”.

[This clause has] been the source of much virulent invective and petulant declamation against the proposed Constitution. They have been held up to the people in all the exaggerated colors of misrepresentation as the pernicious engines by which their local governments were to be destroyed and their liberties exterminated; as the hideous monster whose devouring jaws would spare neither sex nor age, nor high nor low, nor sacred nor profane.

And yet, strange as it may appear, after all this clamor, to those who may not have happened to contemplate them in the same light, it may be affirmed with perfect confidence that the constitutional operation of the intended government would be precisely the same, if these clauses were entirely obliterated, as if they were repeated in every article. They are only declaratory of a truth which would have resulted by necessary and unavoidable implication from the very act of constituting a federal government, and vesting it with certain specified powers...

What is a power, but the ability or faculty of doing a thing? What is the ability to do a thing, but the power of employing the MEANS necessary to its execution? What is a LEGISLATIVE power, but a power of making LAWS? What are the MEANS to execute a LEGISLATIVE power but LAWS? What is the power of laying and collecting taxes, but a LEGISLATIVE POWER, or a power of MAKING LAWS, to lay and collect taxes? What are the proper means of executing such a power, but NECESSARY and PROPER laws?

This simple train of inquiry furnishes us at once with a test by which to judge of the true nature of the clause complained of. It conducts us to this palpable truth, that a power to lay and collect taxes must be a power to pass all laws NECESSARY and PROPER for the execution of that power...

But SUSPICION may ask, Why then was it introduced? The answer is, that it could only have been done for greater caution, and to guard against...those who might hereafter feel a disposition to...evade the legitimate authorities of the Union.

The Convention probably foresaw...that the danger which most threatens our political welfare is that the State governments will finally sap the foundations of the Union... Whatever may have been the inducement to it, the wisdom of the precaution is evident from the cry which has been raised against it; as that very cry betrays a disposition to question the great and essential truth which it is manifestly the object of that provision to declare.

Source:

The Federalist Papers Library of Congress, Thomas

Supporting Question 1

Featured Source B

Marshall Decision on McCulloch v Maryland – 1819 (excerpt)

Excerpt

James McCulloch v. The State of Maryland, John James

17 U.S. 316 (Wheat.)

February Term, 1819

In this landmark Supreme Court decision, Chief Justice John Marshall takes up the questions of a) whether Congress has the right to create a national bank, and b) whether Maryland has the right to place a tax the bank..

The great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective States, and cannot be controlled by them. [Therefore]: 1st. ...a power to create implies a power to preserve. 2nd. ...a power to destroy, if wielded by a different hand, is hostile to, and incompatible with these powers to create and to preserve. 3d. ...where this [conflict] exists, that authority which is supreme must control, not yield to that over which it is supreme. . . .

The power to tax involves the power to destroy. The power to destroy may defeat and render useless the power to create.

If we apply the principle for which the State of Maryland contends, to the constitution generally, we shall find it capable of changing totally the character of [the constitution]. We shall find it capable of arresting [freezing] all the measures of the government, and of prostrating it at the foot of the States. The American people have declared their constitution, and the laws made in pursuance thereof, to be supreme; but [Maryland wants to] transfer the supremacy, in fact, to the States.

If the States may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States. . . . The Court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared.

We are unanimously of opinion, that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.

Source:

Our Documents National History Day, The National Archives and Records Administration, and USA Freedom Corps.

Supporting Question 1

Featured Source C

James Madison to Spencer Roane, September 2, 1819 (excerpt)

Excerpt

To Spencer Roane From James Madison

September 2, 1819 Dear Sir:

...

It is true, the Court are disposed to retain a guardianship of the Constitution against legislative encroachments. "Should Congress," say they, "under the pretext of executing its Powers, pass laws for this Tribunal to say that such an act was not the law of the land." But suppose Congress should, as would doubtless happen, pass unconstitutional laws not to accomplish objects not specified in the Constitution, but the same laws as means expedient, convenient or conducive to the accomplishment of objects entrusted to the Government; by what handle could the Court take hold of the case?

It could not but happen, and was foreseen at the birth of the Constitution, that difficulties and differences of opinion might occasionally arise in expounding terms & phrases necessarily used in such a charter; more especially those which divide legislation between the General & local Governments; and that it might require a regular course of practice to liquidate & settle the meaning of some of them. But it was anticipated I believe by few if any of the friends of the Constitution, that a rule of construction would be introduced as broad & as pliant as what has occurred.

Much of the error in expounding the Constitution has its origin in the use made of the species of sovereignty implied in the nature of Govt. The specified powers vested in Congress, it is said, are sovereign powers, and that as such they carry with them an unlimited discretion as to the means of executing them. It may surely be remarked that a limited Govt. may be limited in its sovereignty as well with respect to the means as to the objects of his powers; and that to give an extent to the former, superseding the limits to the latter, is in effect to convert a limited into an unlimited Govt. There is certainly a reasonable medium between expounding the Constitution with the strictness of a penal law, or other ordinary statute, and expounding it with a laxity which may vary its essential character, and encroach on the local sovereignties with which it was meant to be reconcilable.

Source:

The James Madison Papers Library of Congress

Supporting Question 2

Supporting Question	In what ways does the separation of powers limit government power?
Formative Performance Task	Make a T-chart that compares arguments about how the Separation of Powers limits or does not limit government power.
Featured Sources	<ul style="list-style-type: none">• Source A: Federalist paper #48 (excerpt)• Source B: Federalist paper #51 (excerpt)

Separation of Powers will likely be a concept that is familiar to students, so teachers may or may not need to introduce the concept. Two sources are included for this supporting question. Federalist papers #48 and #51 present distinct reasons for why the concept of separation of powers was important. As students take notes on these sources, they should be prompted to tease out those distinctions.

Formative Performance Task

The formative performance task calls on students to compare arguments about how the separation of powers limits or does not limit government power. Students should locate the main point in each source and write a sentence summary of those main points, then compare the two sources in a T-chart.

Supporting Question 2

Featured Source A

Federalist paper #48 (excerpt)

Excerpt

These Departments Should Not Be So Far Separated as to Have No Constitutional Control Over Each Other
From the New York Packet

February 1, 1788.

Author: James Madison (Publius)

To the People of the State of New York:

It was shown in the last paper that [political wisdom] does not require that the legislative, executive, and judiciary departments should be wholly unconnected with each other. I shall undertake, in the next place, to show that unless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained.

It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident, that none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others. What this security ought to be, is the great problem to be solved.

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. On the other side, the executive power being restrained within a narrower compass, and being more simple in its nature, and the judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all: as the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all a prevailing influence, over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter, which gives still greater facility to encroachments of the former.

Source:

The James Madison Papers Library of Congress

Supporting Question 2

Featured Source B

Federalist paper #51 (excerpt)

Excerpt

The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments From the New York Packet

February 8, 1788

Author: Alexander Hamilton or James Madison (Publius)

To the People of the State of New York: Ambition must be made to counteract ambition.

In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

Second: It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable.

The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security...The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.

Source:

The Federalist Papers Library of Congress, Thomas

Supporting Question 3

Supporting Question	How do factions and personal liberties affect the functioning of government?
Formative Performance Task	Write a brief paragraph that infers from the sources about whether factions and personal liberties are compatible.
Featured Sources	<ul style="list-style-type: none">• Source A: Federalist paper #10 (excerpt)• Source B: Anti-Federalist #84: "On the Lack of a Bill of Rights" (excerpt)

The two sources for this supporting question are Federalist paper #10 and Anti-federalist paper #84. Federalist paper #10 presents the idea that people will naturally come together in factions, and those factions, both large and small, can create problems for representative government. The concept of checks and balances limits the potential harm that factions can cause. Anti-federalist paper #84 laments the lack of a declaration of bill of rights in the Constitution. This essay argues that the rights of the people, if not specifically enumerated in the Constitution, would be trampled upon by the government. The teacher may note that Anti-federalists were being asked to believe that the first Congress would actually add the first ten amendments, which we call the Bill of Rights, into the Constitution.

Formative Performance Task

The formative performance task is to infer from the sources about whether factions and personal liberties are compatible. Students might first summarize the arguments in the two sources, then put forward an inference about whether the protection of personal liberties increases the likelihood that factions will form.

Supporting Question 3

Featured Source A

Federalist paper #10 (excerpt)

Excerpt

The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection

November 23, 1787

Author: James Madison (Publius)

To the People of the State of New York:

Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual [hatred], that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination... The regulation of these various and interfering interests forms the principal task of modern legislation...

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

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

Source:

The Federalist Papers Library of Congress, Thomas

Supporting Question 3

Featured Source B

Anti-Federalist #84: "On the Lack of a Bill of Rights" (excerpt)

Excerpt

On the Lack of a Bill of Rights (Brutus II)

From the New York Journal

November 1, 1787

Written by: Robert Yates (Brutus)

I need say no more, I presume, to an American, than that this principle is a fundamental one: in all the Constitutions of our own States; [all of them are] founded on a...bill of rights, or [have] certain express reservation of rights interwoven in the body of them. From this it appears, that at a time when the pulse of liberty beat high, and when an appeal was made to the people to form Constitutions for the government of themselves, it was their universal sense, that such declarations [of rights] should make a part of their frames of government. It is, therefore, the more astonishing, that this grand security to the rights of the people is not to be found in this Constitution...

This will appear the more necessary, when it is considered, that not only the Constitution and laws made in pursuance thereof, but all treaties made, under the authority of the United States, are the supreme law of the land, and supersede the Constitutions of all the States... I do not find any limitation or restriction to the exercise of this power. The most important article in any [state] Constitution may therefore be repealed, even without a legislative act. Ought not a government, vested with such extensive and indefinite authority, to have been restricted by a [bill] of rights? It certainly ought.

So clear a point is this, that I cannot help suspecting that persons who attempt to persuade people that such reservations were less necessary under this Constitution than under those of the States, are wilfully endeavoring to deceive, and to lead you into an absolute state of vassalage.

Source:

The Anti-Federalist Papers The Internet Archive, LibriVox

Summative Performance Task

Compelling Question	Did the founders want government to work?
Argument	In this task, students will write an essay (or produce an alternative product) answering the compelling question – Did the founders want government to work?
Extension	Make a speech on how the government is currently functioning or dtysfunctioning.

Argument

By this point in the inquiry, students have examined many historical sources. They have responded to three supporting questions, and should have lots of information that can be used as evidence in their essay. The summative performance task requires students to take a stand on the question, but also allows for multiple interpretations.

Extension

Students' speeches will need to consider, but are not limited to the machinery of government—executive power, checks and balances, separation of powers. Students may make a speech on how the government is currently functioning with regards to political parties and/or agendas. This speech could be live or recorded and broadcasted.

Taking Informed Action

Understand	Identify an issue where the United States Congress has failed to take action and determine consequences of that failure to take action.
Assess	Students will determine the extent to which the issue has failed to take action, determine consequences of that failure to take action, and recommend revisions for success.
Action	Findings of the issue's failure to take action and its consequences as well as recommended revisions will be shared by writing a letter to a member of the United States Congress.

Students will write a letter to a current United States Congress member. The letter will Identify an issue where the United States Congress failed to take action, determine consequences of that failure to take action, and recommend revisions to improve or change this issue in an aim to create success rather than failure on ways the United States Congress could take action on the identified issue.

