

Big Ideas Behind the Constitution

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Spring 2009



Thomas Jefferson

<p>1. Congress. The Stamp Act was the biggest mistake of Grenville's career. News of it shook the colonies like an earthquake. Americans disagreed about many things, but this united them as never before. The amount to be charged was not the problem; their own assemblies often taxed them more heavily. Their own assemblies! That was the point. Americans were used to electing those who taxed them. If they disliked the taxes, they voted the taxers out of office and elected those who'd change the law. It was that simple. Albert Marrin, Professor of History at Yeshiva University, <i>The War for Independence</i> (New York: Athenaeum, 1988) 15.</p>	<p>Main Ideas: Analysis: Evaluation:</p>
<p>The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States . . . For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all cases whatsoever. Thomas Jefferson, <i>Declaration of Independence</i>, July 4, 1776.</p>	
<p>"Taxation without Representation is tyranny." James Otis, Lawyer and American Patriot, 1763.</p>	
<p>Liberty was no vague term with our revolutionary forebears. To the Americans of 1776, liberty meant, first, freedom under laws of their own making. Second, liberty meant the right to do anything that did not harm another. John Locke said, "Where law ends, tyranny begins." Samuel Eliot Morison, Progressive Professor of History at Harvard, <i>The Oxford History of the American People</i> (New York: Oxford University Press, 1965) 271.</p>	
<p>2. Limited Government. Political liberty is to be found only in moderate governments; and even in these it is not always found. It is there only when there is no abuse of power: but constant experience [shows] us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go. Baron Charles de Montesquieu, <i>The Spirit of the Laws</i>, 1748, Franklin Le Van Baumer, <i>Main Currents of Western Thought</i>, (New York: Alfred A. Knopf, 1964), 416.</p>	<p>Main Ideas: Analysis: Evaluation:</p>
<p>The proper way, the American founders felt, to secure liberty was to set up a representative government, limited in scope by a statement of natural rights with which no government may meddle. Consequently, every state constitution included a bill of rights. Samuel Eliot Morison, 271-2.</p>	
<p>Power tends to corrupt and absolute power corrupts absolutely. British</p>	

statesman Lord Dalberg-Acton, 1887.	
There is danger from all men. The only maxim of a free government ought to be to trust no man living with power to endanger the public liberty. John Adams, lawyer and Founding American Father, <i>Notes for an Oration at Braintree</i> , Spring 1772.	
“A government which is strong enough to give you everything you want is strong enough to take everything you've got . . . The nine most terrifying words in the English language are, ‘I’m from the government and I'm here to help.’” Ronald Reagan, US President, 1982.	

3. Elastic Clause. The Congress shall have power . . . 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. <i>US Constitution</i> , Article I, Section 8 (1788).	Main Ideas: Analysis: Evaluation:
If the delegation of their powers be safe, no possible inconvenience can arise from this clause. It is at most but explanatory. For when any power is given, its delegation necessarily involves authority to make laws to execute it. Were it possible to delineate on paper all those particular cases and circumstances in which legislation by the general legislature would be necessary, and leave to the states all the other powers, I imagine no gentleman would object to it. But this is not within the limits of human capacity. The particular powers, which are found necessary to be given are therefore delegated generally, and particular and minute specification is left to the legislature. James Madison, Political theorist and Founding American Father, Virginia Convention to Ratify the US Constitution, June 16, 1788, 438-9.	
The sixth and last class [the “necessary and proper clause] consists of the several powers and provisions by which efficacy is given to all the rest . . . Few parts of the Constitution have been assailed with more intemperance than this; yet on a fair investigation of it, no part can appear more completely invulnerable. Without the substance of this power, the whole Constitution would be a dead letter. James Madison, “Restrictions on the Authority of the Several States: New York Packet,” <i>Federalist No 44</i> , January 25, 1788.	
As the powers delegated under the new system are more extensive [compared with the Articles of Confederation’s enumeration of express powers], the government which is to administer it would find itself still more distressed with the alternative of betraying the public interests by doing nothing, or of violating the Constitution by exercising powers indispensably necessary and proper, but, at the same time, not <i>expressly</i> granted. James Madison, 1788.	
No axiom is more clearly established in law, or in reason, than that wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it is included. James Madison, 1788.	

<p>The power objected to is necessary, because it is to be employed for national purposes. It is necessary to be given to every government. This is not opinion, but fact. James Madison, Virginia Convention to Ratify the US Constitution, June 16, 1788, 414.</p>	
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<p>4. Alexander Hamilton. This is one of those truths, which, to a correct and unprejudiced mind, carries its own evidence along with it; and may be obscured, but cannot be made plainer by argument or reasoning. It rests upon axioms as simple as they are universal; the MEANS ought to be proportioned to the END; the persons, from whose agency the attainment of any END is expected, ought to possess the MEANS by which it is to be attained. Alexander Hamilton, Author of several <i>Federalist Papers</i> and American Founding Father, “The Necessity of a Government as Energetic as the One Proposed to the Preservation of the Union, <i>New York Packet</i>,” <i>Federalist No. 23, December 18, 1787.</i></p>	<p>Main Ideas: Analysis: Evaluation:</p>
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<p>A government, the constitution of which renders it unfit to be trusted with all the powers which a free people OUGHT TO DELEGATE TO ANY GOVERNMENT, would be an unsafe and improper depository of the NATIONAL INTERESTS. Wherever THESE can with propriety be confided, the coincident powers may safely accompany them. Alexander Hamilton, 1787.</p>	
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<p>This, at all events, must be evident, that the very difficulty itself, drawn from the extent of the country, is the strongest argument in favor of an energetic government; for any other can certainly never preserve the Union of so large an empire. If we embrace the tenets of those who oppose the adoption of the proposed Constitution, as the standard of our political creed, we cannot fail to verify the gloomy doctrines, which predict the impracticability of a national system pervading entire limits of the present Confederacy. Alexander Hamilton, 1787.</p>	
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<p>When the government is drawn from the people, and depending on the people for its continuance, oppressive measures will not be attempted, as they will certainly draw on their authors the resentment of those on whom they depend. On this government, thus depending on ourselves, for its existence, I will rest my safety, notwithstanding the danger depicted by the honorable gentleman. John Marshall, Leader of Federalist Party and First Supreme Court Justice, Virginia Convention to Ratify the US Constitution, June 16, 1788, 420.</p>	
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<p>5. Patrick Henry. Compare this power, says he, with the next clause, which gives them power to make all laws which shall be necessary to carry their laws into execution. By this they have a right to pass any law that may facilitate the execution of their acts. They have a right, by this clause, to make a law that such a district shall be set apart for any purpose they please, and that any man who shall act contrary to their commands, within certain ten miles square, or any place they may select, and strongholds, shall be hanged without benefit of clergy . . . They will</p>	<p>Main Ideas: Analysis: Evaluation:</p>
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not be superior to the frailties of human nature. However cautious you may be in the selection of your representatives, it will be dangerous to trust them with such unbounded powers. Patrick Henry, Attorney and American Patriot leader, Virginia Convention to Ratify the US Constitution, June 16, 1788, 436-7.	
But gentlemen say that the power will not be abused. They ought to show that it is necessary. All their powers may be fully carried into execution, without this exclusive authority in the ten miles square. The sweeping clause will fully enable them to do what they please. Patrick Henry (1788), 437.	
George Mason thought that there were few clauses in the Constitution so dangerous as that which gave Congress exclusive power of legislation within ten miles square. Implication, he observed, was capable of any extension, and would probably be extended to augment the congressional powers. But here there was no need of implication. This clause gave them an unlimited authority, in every possible case, within that district. George Mason, Virginia Convention to Ratify the US Constitution, June 16, 1788, 431.	

6. Separation of Powers. Political liberty is the absence of one dominating powers in the state, whatever its kind: the king, the aristocrats, and the people. The conservation of liberty depends on the separation and balance of powers, such as the executive, the legislative, and the judicial . . . Montesquieu hoped to limit the central government's power by balancing it with other power centers. Baron Charles Montesquieu, French lawyer (1748), 763, 764.	Main Ideas: Analysis: Evaluation:
An absolute monarch is indeed inconsistent with civil society. With both legislative and executive power in himself alone, there is no judge to be found, no appeal lies open to any one, who may fairly and indifferently and with authority to decide. John Locke, British philosopher, <i>Of Civil Government</i> , 1689, John Louis Beatty, Oliver A. Johnson, <i>Heritage of Western Civilizations, Select Readings, Second Edition</i> (Englewood Cliffs, New Jersey: Prentice Hall, 1958), 136.	
There is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be legislators. Were it joined to the executive power, the judge might behave with violence and oppression. Baron Charles de Montesquieu (1748), 416.	
The framers had developed a far more complex form of federal government than that provided by the Articles of Confederation. To curb the excesses of democracy, they devised a government with limits and checks on all three branches of government. They set forth a powerful president who could veto Congress, but they gave Congress power to override presidential vetoes. They set up a national judiciary to settle disputes between states and citizens of different states. They separated	

<p>branches of government not only by functions and by reciprocal checks but by deliberately basing the election of each branch on different universes of voters-voting citizens (the House), state legislators (the Senate), and the electoral college (the presidency). James L. Roark, Professor of History at Emory University, Michael P Johnson, Johns Hopkins University, Patricia Cline Cohen, University of California, Santa Barbara, Sarah Stage, Arizona State University, Alan Lawson, Boston College, and Susan M. Hartmann, Ohio State University, <i>The American Promise: A Compact History Third Edition Volume I: To 1877</i> (Boston, Massachusetts: St. Martin's, 2007) 203.</p>	
<p>7. Judicial Review. The judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that. John Adams, <i>Second Letter to Abigail Adams</i>, July 3, 1776.</p>	<p>Main Ideas: Analysis: Evaluation:</p>
<p>The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States . . . He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers. He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries. Thomas Jefferson, Federalist Party leader, <i>Declaration of Independence</i>, July 4, 1776.</p>	
<p>Within these limits the power vested in the American courts of justice of pronouncing a statute to be unconstitutional forms one of the most powerful barriers that have ever been devised against the tyranny of political assemblies. Alexis de Tocqueville, French philosopher, 1835.</p>	
<p>8. Tyranny of the Majority. The delegates in Philadelphia made a distinction between democracy and republicanism new to American political vocabulary. Pure democracy was now taken to be a dangerous thing. As a Massachusetts delegate put it, "the evils we experience flow from the excess of democracy." The delegates still favored republican institutions but they created a government that gave direct voice to the people only in the House and that granted a check on that voice to the Senate, a body of men elected not by direct popular vote but by the state legislatures. Senators served for six years, with no limit on reelection; they were protected from the whims of democratic majorities and their long terms fostered experience and maturity in office. James L. Roark, 203.</p>	<p>Main Ideas: Analysis: Evaluation:</p>
<p>In one of the most compelling essays, <i>Federalist Number 10</i>, James Madison challenged the Antifederalists' heartfelt conviction that republican government had to be small-scale. Madison argued that a large and diverse population was itself a guarantee of liberty. In a national government, no single faction could ever be large enough to subvert the freedom of other group. "Extend the sphere, and you take in a</p>	

<p>greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens," Madison asserted. He called it "a republican remedy for the diseases most incident to republican government." James L. Roark, 206.</p>	
<p>Similarly, the presidency evolved into a powerful office out of the reach of direct democracy. The delegates devised an electoral college whose only function was to elect the president and vice president. Each state's legislature would choose the electors, whose number was the sum of representatives and senators for the state, an interesting melding of the two principles of representation. The president thus would owe his office not to the Congress, the states, or the people, but to a temporary assemblage of distinguished citizens who could vote their own judgment on the candidates. James L. Roark, 203.</p>	
<p>The fundamental article of my political creed is that despotism, or unlimited sovereignty, or absolute power, is the same in a majority of a popular assembly, an aristocratical council, an oligarchical junto, and a single emperor. John Adams, <i>Letter to Thomas Jefferson</i>, November 13, 1815.</p>	
<p>English philosopher John Stuart Mill wrote "On Liberty," an essay in which he stated that the tyranny of the majority was "more formidable than many kinds of political oppression, since . . . it leaves fewer means of escape, penetrating much more deeply into the details of life . . . There needs [to be] protection against the tyranny of the prevailing opinion and feeling, against the tendency of society to impose . . . its own ideas and practices . . . or those who dissent from them." Reggie Rivers, African American Bronco football player and journalist, <i>Denver Post</i>, February 27, 2004, 7B.</p>	
<p>9. Elections. The frame of the government under which we live, this same people have wisely given their public servants but little power for mischief; and have, with equal wisdom, provided for the return of that little to their own hands at very short intervals. While the people retain their virtue and vigilance, no administration, by any extreme of wickedness or folly, can very seriously injure the government in the short space of four years. Abraham Lincoln, <i>First Inaugural Address</i>, 1861, Henry Steele Commager, editor, Professor of American History at Columbia University, <i>The Blue and the Gray</i>, (New York: Crescent Books, 1950), 17.</p>	<p>Main Ideas: Analysis: Evaluation:</p>
<p>The only sure bulwark of continuing liberty is a government strong enough to protect the interests of the people, and a people strong enough and well enough informed to maintain its sovereign control over its government. Franklin Delino Roosevelt, US President, <i>Fireside Chat</i>, 1938.</p>	
<p>The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of</p>	

an absolute Tyranny over these States . . . He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures. He has affected to render the military independent of and superior to the Civil Power. For imposing taxes on us without our Consent. For depriving us in many cases, of the benefits of Trial by Jury. Thomas Jefferson, <i>Declaration of Independence</i> , July 4, 1776.	
"If you can't vote, then you're not free . . . If you can vote, then you can elect a police commissioner or a sheriff who doesn't turn attack dogs on children." Martin Luther King, Ellen Levine, "If You Had Lived In the Time of Martin Luther King", <i>Scholastic Inc.</i> (New York: 1990) 59.	

10. Freedom of the Press. If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be . . . Enlighten the people generally, and tyranny and oppressions of body and mind will vanish like evil spirits at the dawn of day. Thomas Jefferson, 1813.	Main Ideas: Analysis: Evaluation:
Liberty cannot be preserved without a general knowledge among the people, who have a right . . . and a desire to know; but besides this, they have a right, an indisputable, unalienable, divine right to that most dreaded and envied kind of knowledge, I mean of the character and conduct of their rulers. John Adams, 1765.	
The freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments. George Mason, delegate to Constitutional Convention, 1776.	
I believe that truth is the glue that holds government together not only our government but civilization itself. That bond, though strained, is unbroken. My fellow Americans, our long national nightmare is over. Our Constitution works. Our great Republic is a government of laws and not of men. Here the people rule. US President Gerald R. Ford, swearing-in ceremony, Washington, D.C., August 9, 1974, Howard J. Langer, journalist and textbook editor, <i>America in Quotations: A Kaleidoscopic View of American History</i> (Westport, Connecticut: Greenwood Press, 2002) 345.	
A great writer is, so to speak, a second government in his country. And for that reason no regime has ever loved great writers, only minor ones. Russian author Alexander Solzhenitsyn, 1964.	

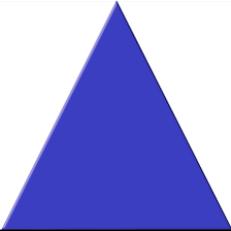
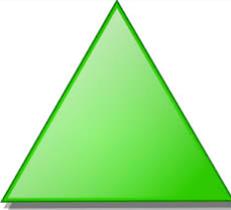
11. Loyal Opposition. My fellow citizens have made their choice and have selected General Eisenhower and the Republican party as the instruments of their will for the next four years. The people have rendered their verdict and I gladly accept it . . . It is traditionally American to fight hard before an election. It is equally traditional to close ranks as soon as the people have spoken . . . That which unites us as American citizens is far greater than that which divides us as political parties. I urge you all to give General Eisenhower the support he will need to carry out the great tasks that lie before him. I pledge him mine.	Main Ideas: Analysis: Evaluation:
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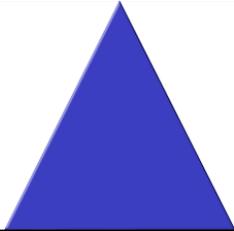
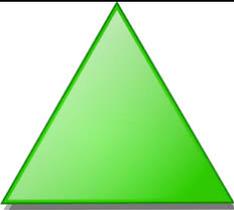
We vote as many, but we pray as one. Adlai Stevenson, Democratic Senator and Presidential nominee, Springfield, Illinois, November 5, 1952, William Safire, <i>Lend Me Your Ears: Great Speeches in History</i> (New York: W.W. Norton & Company, 1992), 963.	
"In the course of several decades of electoral struggle, Americans turned theory into practice, each side learning with great pain how to be an opposition party without becoming a revolutionary one . . . American political parties groped toward a theory of legitimate opposition." Linda K. Kerber, Professor of History at the University of Iowa, "The Revolutionary Generation: Ideology, Politics, and Culture in the Early Republic," Eric Foner, New Left Professor of History at Columbia, editor, <i>The New American History</i> (Philadelphia, Pennsylvania: Temple University Press, 1997), 52.	
A politician knows that more important than the bill that is proposed is the law that is passed . . . A politician knows that only if he leaves room for discussion and room for concession can he gain room for maneuver. A politician knows that the best way to be a winner is to make the other side feel that it does not have to be a loser. Richard Nixon, US Republican President, 1969, William Safire, 234-5.	
A fair or poor bill is better than no bill at all, and that only through the give and take of compromise will any bill receive the successive approval of the Senate, the House, the President and the nation. John F. Kennedy, US Democratic President, <i>Profiles in Courage</i> (New York: Harper & Row Publishers, 1964), 26.	

12. Spirit of Compromise. Henry Clay . . . said that compromise was the cement that held the Union together. "All legislation . . . is founded upon the principle of mutual concession" . . . It is compromise that prevents each set of reformers . . . from crushing the group on the extreme opposite end of the political spectrum. John F. Kennedy (1964), 25.	Main Ideas: Analysis: Evaluation:
A Compromise . . . is a work of mutual concession--an agreement in which there are reciprocal stipulations--a work in which for the sake of peace and concord, one party abates his extreme demands in consideration of an abatement of extreme demands by the other party; it is a measure of mutual concession--a measure of mutual sacrifice. Henry Clay, Kentucky Senator, 1849, William Safire, 888.	
In the nature of government and its operations . . . it is necessary upon his part, in order to secure what he wants, to grant something to the other side. Henry Clay, 1849, William Safire, 888.	
Compromising "politicians"--are simply engaged in the fine art of conciliating, balancing and interpreting the forces and factions of public opinion, an art essential to keeping our nation united and enabling our Government to function. John F. Kennedy (1964), 26.	
All government--indeed, every human benefit and enjoyment, every virtue and every prudent act--is founded on compromise and barter. Edmund Burke, British Statesman, <i>Second Speech on Conciliation with</i>	

<i>America, The Thirteen Resolutions</i> [March 22, 1775].	
13. Rebellion. This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it. US President Abraham Lincoln, 1861.	Main Ideas: Analysis: Evaluation:
The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure . . . A little rebellion now and then is a good thing, and as necessary in the political world as storms in the physical. Thomas Jefferson, <i>Letter to James Madison</i> , 1787.	
To secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, having its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Thomas Jefferson, <i>Declaration of Independence</i> , July 4, 1776.	
14. Voluntary Compliance. Under the political science theory of voluntary compliance, laws are unenforceable, when over 90% of the people do not choose to abide by the law as written. Education, persuasion and consensus are the keys to voluntary compliance.	Main Ideas: Analysis: Evaluation:
The most urgent interest of the ruler, and the most indispensable of his duties, is therefore to ensure compliance with the laws which he administers, and on which his entire authority is based. Jean-Jacques Rousseau, Swiss/French philosopher, <i>Discourse on Political Economy and the Social Contract</i> (New York, Oxford University Press, 1755) 11.	
For the first law of all is that laws must be respected; rigorous punishments are a futile expedient that was invented by small minds, in the aim of using terror as a replacement for the respect which they are unable to earn. Jean-Jacques Rousseau, (1755) 11-2.	
What people think—or public opinion—matters more than anything else in politics. Whoever is trying to govern needs the cooperation and confidence of the people they are governing. If they don't have it, their job of running the government and making decisions becomes impossible. Edward Keenan, <i>The Art Of The Possible: An Everyday Guide to Politics</i> (Berkeley, CA: Owlkids Books, 2015) 21.	
[I]f you're a ruler who passes laws everyone hates, people will just ignore them—the police cannot reasonably arrest everyone, so laws that most people ignore become useless. Edward Keenan, 21.	
. . . if enough people are breaking the law, it becomes impractical for police to catch them all. For example, right now in North America, many (possibly even most) people ignore highway speed limits, going faster than the posted speed almost all the time. Police catch the odd person and	

<p>issue a ticket, but there are just too many cars going fast for all of them to get caught. If authorities wanted to pull over every speeder, they'd need thousands of extra police cars for every stretch of highway, and traffic would grind to a complete halt. So instead they catch only a few people, and going a little bit faster than the speed limit is considered completely normal. Which means that the laws are very ineffective at stopping people from speeding. Edward Keenan, 22.</p>	
<p>Governments everywhere depend on the consent of the governed. CSA Brigadier General James L. Kemper, Gettysburg (Michael Shaara, 1993).</p>	

Separation	Of	Powers
		
Foreign Policy	Executive: Carries out the laws.	Commander in Chief
Secretary of State	President	US Military
Vice President	Vice President	Joint Chiefs of Staff Pentagon
Cabinet - DOJ	Cabinet - DOJ	Army
FBI	FBI	Navy
IRAs	IRAs	Air Force
		
Legislature: Makes Policy		Judiciary: Enforces the law
Senate		Supreme Court
House of Representatives		Circuit Courts
Congressional Staff		Federal District Courts

Checks		And	Balances
			
Impeachment 	Veto 	Executive: Enforces and Carries out the laws.  	Nominates Judges 
Purse Strings:  			Determines What the Constitution Means  
		Impeach Judges Consents to Nomination 	
Legislature: Makes Policy  			Determines how to interpret the laws  

Separation of Powers Discussion.



James Madison

<p>1. Why did the Founding Fathers believe that the Legislature was the most powerful Branch?</p>	
<p>2. In point of fact, why is the Presidency the most powerful branch of government?</p>	
<p>3. Why is the Judiciary the weakest branch? (What does their yellow color represent?)</p>	
<p>4. What makes Checks and Balances work?</p>	<p>Factions that check each other. James Madison.</p> <p>Faction counters faction. John Adams.</p>
<p>5. Are the concepts of Limited Government and the Elastic Clause consistent? Why or Why not? Please explain.</p>	

6. Are the concepts of Majority Rule and Minority rights consistent?	
7. Are the Concepts of: Voluntary Compliance, the Loyal Opposition and the Spirit of Compromise consistent with the Right to Rebel?	