

NEW RESOURCE—All Documents and Court Cases Required by THE COLLEGE BOARD

Foundational Documents and Court Cases Reader

This Reader covers all of the documents and Supreme Court cases required by the College Board and supports student with explanatory notes, vocabulary entries, concept checks, and model FRGs.

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Karen Waples ■ Pamela Lamb
Katie Piper ■ Benwari Singh

Federalist No. 51

The Structure of the Government Must Furnish the Proper Checks and Balances between the Different Departments

James Madison

The *Federalist Papers* were a series of essays written by Alexander Hamilton, John Jay, and James Madison. These essays were written as a response to essays that were opposed to the new Constitution published in New York newspapers during the ratification debate in the fall of 1787. In all, Hamilton, Jay, and Madison published 85 essays under the pseudonym Publius that explored the benefits of the new Constitution and advocated that New Yorkers should support ratification.

Focus on Federalist No. 51

Federalist No. 51 was written in 1788 as a response to an Antifederalist paper entitled *Centinel 1* that had been published in fall of 1787. This essay criticized the three-branch system of government that the Constitution created, claiming that this model would make it too difficult for the people to effectively hold government officials accountable as compared to a one-branch model (what existed under the Articles of Confederation).

Federalist No. 51 explains the purpose and function of both separation of powers and checks and balances within the three branches. Madison describes the need for a government strong enough to organize and control a society full of imperfect people but that also keeps their imperfect leaders in check. This writing is the classic explanation and defense of the “Madisonian Model” of government still in operation today.

Overview of Federalist No. 51

In the essay, Madison

- describes the purpose of a separation of powers.
- explains why human nature is such that a government must be designed to prevent abuse of power.
- describes a need for balancing the power of the legislature and the executive.
- explains the purpose of checks and balances.
- describes how these principles apply in our federal system of government with distinct state and national powers.

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Reader Alert!

Federalist No. 51 is as dense and as full of dated vocabulary as the other *Federalist Papers*. However, it also contains often-quoted pieces of political philosophy such as the sentence, “If men were angels, no government would be necessary.” Don’t get hung up on any one line of the document, and instead try to absorb its basic message about the intent and purpose of separation of powers and checks and balances. As you read, evaluate—based on the evidence you see of our political system today, whether or not the Constitution designed a system that works as the Founders intended.

[On separation of powers in practice]

To the People of the State of New York:

To what expedient then shall we finally resort, for maintaining in practice the necessary *partition* of power among the several departments, as laid down in the constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government, as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general observations, which may perhaps place it in a clearer light

partition—structure dividing a space, a division into parts

What constitutional principle is described in this passage?

Essential Documents

Each document is accompanied by reading support, commentary, and guided questions to help students understand these complex texts.

Landmark Cases

The required court cases are put into context. The Reader provides key excerpts from the decisions to give students firsthand experience with the language and reasoning without being overwhelming. Each case concludes with a sample SCOTUS question.

Wisconsin v. Yoder

■ Focus on *Wisconsin v. Yoder* (1972)

The First Amendment's free exercise clause protects the right of individuals to exercise their religious beliefs. In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), members of a religious group, the Amish, argued that their religion forbade them from formal education for their children beyond eighth grade. When the Amish declined to send their children to school after the eighth grade, they violated the state of Wisconsin's compulsory school attendance law, which required education through the age of sixteen. In this case, the Supreme Court had to rule on whether the First Amendment allowed the Amish to refuse to follow the compulsory education law.

■ Facts of the Case

Members of the Old Order Amish and the Conservative Amish Mennonite Church in Green County, Wisconsin, were convicted of violating Wisconsin's compulsory school attendance law (requiring a child's school attendance until age sixteen) by declining to send their children to public or private school after they had graduated from the eighth grade. The Amish claimed the compulsory attendance law violated their First Amendment rights and argued that their children's attendance at high school, public or private, was contrary to their religion and way of life. The evidence showed that respondents sincerely believed that attendance at a high school endangered their own salvation and that of their children by complying with the law. The Amish provided vocational education to their children designed to prepare them for life in an isolated rural Amish community and claimed that Wisconsin's law violated their rights under the free exercise clause of the First Amendment, made applicable to the states by the Fourteenth Amendment.

The state of Wisconsin argued that the compulsory school until age sixteen was reasonable exercise of governmental power and that the state as the responsibility for educating its citizens. The further argued that the state had a compelling interest in educating all citizens through age sixteen to benefit the larger society and that this interest overrides the arguments of the Amish. The state of Wisconsin argued that the final years of high school prepare students for employment and civic participation and that if the Amish chose to leave the community they would need to have a proper education to be successful. Mandatory school laws apply to everyone regardless of religion.

The state supreme court sustained the claim of the Amish that application of the compulsory school attendance law to them violated their rights under the free exercise clause of the First Amendment, made applicable to the states by the Fourteenth Amendment, and the state appealed.

■ SCOTUS Practice Question

Walter "Billy" Gobitas, a ten-year old elementary school student in 1935, was asked to salute the flag while reciting the Pledge of Allegiance but refused. Gobitas was a member of the Jehovah's Witnesses denomination, which does not allow saluting anything but God. As a member of the Jehovah's Witnesses, he believed that saluting the flag was akin to idol worship and a violation of the commandments. Gobitas was expelled. Gobitas argued that the school policy requiring him to salute the flag violated the First Amendment's guarantee of religious freedom. In 1940, the Supreme Court ruled in favor of the school, arguing that the government could require respect for the flag and that the Pledge of Allegiance is a symbol of national unity. The Court held that parents, not the schools, are children's main religious instructors and that the pledge would not interfere with the upbringing of children. (And note that the name of the case misspells the Gobitas family name, which sometimes happens.)

- A. Identify the constitutional clause that is common to both *Wisconsin v. Yoder* (1972) and *Minersville School District v. Gobitis* (1940).
- B. Based on the constitutional clause identified in part A, explain why the facts of *Minersville School District v. Gobitis* led to a similar holding as the facts of *Wisconsin v. Yoder*.
- C. Describe one way a state could limit the impact of the ruling in either *Wisconsin v. Yoder* or *Minersville School District v. Gobitis*.