

JOHN JAY (1745–1829)



This country and this people seem to have been made for each other, and it appears as if it was the design of Providence that an inheritance so proper and convenient for a band of brethren, united to each other by the strongest of ties, should never be split into a number of unsocial, jealous, and alien sovereignties.

—John Jay, 1787



Introduction

John Jay epitomized the selfless leader of the American Revolution. Born to a prominent New York family, John Jay gained notoriety as a lawyer in his home state. He favored a moderate approach to Britain but joined his fellow Patriots once the Declaration of Independence was signed. Jay's fellow Founders regarded him so highly that they elected him President of the Assembly, the highest office in the land under the Articles of Confederation.

Ten years later, President George Washington appointed him the first Chief Justice of the Supreme Court. He reluctantly resigned from the Supreme Court because he had been elected Governor of New York—an office he neither desired nor sought. As Governor, Jay fought for the emancipation of slaves by organizing and mobilizing abolitionist groups and signing an emancipation bill.

Jay left his mark on the new nation despite being somewhat marginalized by history. Jay wrote five essays in *The Federalist Papers*, but James Madison and Alexander Hamilton receive recognition for the now classic commentary. He worked for the Treaty of Paris, but history has given Benjamin Franklin and John Adams most of the credit. He negotiated a trade treaty with Great Britain that helped avoid a war, but history emphasizes his failures. He led the fight against slavery in New York, but his efforts are often overlooked on the national scale. He touched several of the foundations of our nation, while never really capturing attention in one area. His contributions were invaluable to a struggling infant nation and appreciated by his fellow Founding Fathers.

Relevant Thematic Essay for John Jay

- Limited Government

In His Own Words:

JOHN JAY

ON SLAVERY

Overview

In this lesson, students will learn about John Jay. They should first read as homework **Handout A—John Jay (1745–1829)** and answer the **Reading Comprehension Questions**. After discussing the answers to those in class, the teacher should have students answer the **Critical Thinking Questions** as a class. Next, the teacher should introduce the primary source activity, **Handout C—In His Own Words: John Jay on Slavery** in which Jay expresses his opposition to slavery in the new states. As a preface, there is **Handout B—Vocabulary and Context Questions**, which will help the students understand the document. **Handout D—Analysis: Founding Documents** will help students put Jay’s argument in historical context.

There is a **Follow-Up Homework Option**, which asks students to reflect further on Jay’s statements about slavery. **Extensions** asks students to research the roles of Chief Justice of the Supreme Court, or to speculate on how the modern political landscape would change if more officials were, like Jay was, elected to an office without having campaigned for it.

Objectives

Students will:

- explain the historical significance of Jay’s Treaty.
- explain Jay’s efforts to abolish slavery on a state and national level.
- understand John Jay’s various political roles during and after the Revolutionary period.
- analyze Jay’s Letter to Elias Boudinot in terms of the ideas in two American Founding documents.
- appreciate John Jay’s contributions to his country.

Standards

CCE (9–12): IC2, IIA1, IID1

NCHS (5–12): Era III Standard 1B;

Era IV, Standard 2D; 3B

NCSS: Strands 2, 5, 6, and 10

Materials

Student Handouts

- Handout A—John Jay (1745–1829)
- Handout B—Vocabulary and Context Questions
- Handout C—In His Own Words: John Jay on Slavery
- Handout D—Analysis: Founding Documents

Additional Teacher Resources

- Transparency Master A: Founding Documents
- Answer Key

Recommended Time

One 45-minute class period.
Additional time as needed for homework.

LESSON PLAN



I. Background Homework

Ask students to read **Handout A—John Jay (1745–1829)** and answer the Reading Comprehension Questions.



II. Warm-Up [10 minutes]

- A. Review answers to homework questions.
- B. Conduct a whole-class discussion to answer the Critical Thinking Questions.
- C. Ask a student to summarize the historical significance of John Jay.

John Jay served as President of the Assembly under the Articles of Confederation; the first Chief Justice of the Supreme Court; and Governor of New York. He wrote five essays in The Federalist Papers, negotiated “Jay’s Treaty,” and worked for the emancipation of slaves.



III. Context [5 minutes]

Explain to students that as new states entered the Union, Congress was forced to debate the issue of slavery in those new states. Many were concerned that the balance of representation in Congress would tip in favor of one side or the other. The question remained: could Congress regulate trade in the new states? Or was it up to the states themselves? Point out to the class that John Jay had retired as Governor of New York nineteen years prior to writing this letter, and he was living as a private citizen in Westchester. Boudinot was a private citizen who advocated religious tolerance and abolition of slavery.



IV. In His Own Words [20 minutes]

- A. Before class, print out each of the quotes from **Transparency Master A: Founding Documents**. Post them on large, colored poster paper on the opposite walls of the classroom. Leave a large border of poster exposed around the quotes.
- B. Write the following question on the board: Are you ruled by reason or by emotion? Ask students to write a personal response on their own paper in response to the question. While students are writing, continue with part C.
- C. As the class is writing, have one row of students temporarily stop and get up and walk to each poster. As a group, they should read the document, discuss it, and then decide on one adjective that describes the statement on the poster. They should then write that adjective on the poster border. Continue with remaining rows. When all students have finished, read each document and the adjectives students wrote. The teacher may share additional ones from the list below.

Students may suggest for document A: legal, complicated, definite, or old-style language. Teacher may add for document A: rational, legislative, logical, official, or ordered.

Students may suggest for document B: grand, happy, fancy, or religious.

Teacher may add for document B: moral, philosophical, emotional, or universal.

- D. Distribute **Handout B—Vocabulary and Context Questions** and **Handout C—In His Own Words: John Jay on Slavery**.
- E. Have students read **Handout C** and complete the vocabulary and context questions on **Handout B** individually.
- F. Put up an overhead of **Transparency Master A**, divide the class into groups of three, and give each group a copy of **Handout D—Analysis: Founding Documents**.

LESSON PLAN

- G. Have each group use **Handout D** to record Jay's thesis, and analyze the ways Jay uses each document to support his position.
- H. Once students have finished, ask each group to decide which document they believe supports Jay's argument most effectively.



V. Wrap-Up Discussion [10 minutes]

Reconvene the class and conduct a large group discussion to answer the following questions: Why do students believe either document provides the stronger support? Or do both documents support it equally, but in different ways? Finally, how does each document support Jay's argument?

Students who believe Article 1, Section 9 supports Jay's argument may say it does so because the Constitution is the law of the land. To use the Constitution to support abolition is the strongest possible tactic. Other students may say, however, that since the Constitution does not use the word "slaves," nor does it say anything specific about new states, that it is not a strong support for the position that Congress can outlaw slavery in the new states. Students who believe the Declaration of Independence is the stronger support for Jay's argument may say that it is based on the concept of natural (or inalienable) rights. Slavery, they may say, is obviously in opposition to the concept of natural rights. Others may say, however, that at the time, slaves were considered property and not people. Therefore, they did not in fact have natural rights. Furthermore, as property, they were protected by the Constitution. The Constitutional support is a rational argument based on the law, while the Declaration of Independence support is a philosophical argument based on natural law.



VI. Follow-Up Homework Option

John Jay wrote a letter to R. Lushington in 1785 in which he said, "It is much to be wished that slavery may be abolished. The honour of the States, as well as justice and humanity, in my opinion, loudly call upon them to emancipate these unhappy people. To contend for our own liberty, and to deny that blessing to others, involves an inconsistency not to be excused." Ask students to write a two or three paragraph response to this quote.

Source: "What the Founders Said About Slavery." George Mason University.
<<http://www.gmu.edu/departments/economics/wew/quotes/slavery.html>>.



VII. Extensions

- A. Have students research the roles and responsibilities of the Chief Justice of the Supreme Court and present their reports to the class using presentation software.
- B. John Jay returned from overseas in 1795 to learn he had been elected governor. He had neither desired nor sought this office. Ask students how modern politics would change if officials who had never campaigned were elected. How would it improve government? What would be the disadvantages?

LESSON PLAN

Resources

Print

Johnson, Herbert A. *John Jay, 1745–1829*. Albany: State American Revolution Bicentennial Commission, 1970.
Morris, Richard B. *John Jay: The Making of a Revolutionary, 1745–1780*. New York: Harper & Row, 1975.
Morris, Richard B. *Witnesses at the Creation: Hamilton, Madison, Jay, and the Constitution*. New York: Holt, Rinehart & Winston, 1985.
Stahr, Walter. *John Jay: Founding Father*. London: Hambledon & London, 2005.

Internet

“The American Revolution: John Jay.” TheAmericanRevolution.org. <<http://theamericanrevolution.org/people/jjay.asp>>.
“Federalist Papers authored by John Jay.” Founding Fathers Home Page. <<http://www.foundingfathers.info/federalistpapers/jay.htm>>.
“The Jay Court.” The Supreme Court Historical Society. <http://www.supremecourthistory.org/02_history/subs_history/02_c01.html>.
“John Jay.” The Independence Hall Association. <<http://www.ushistory.org/declaration/related/jay.htm>>.
“The Papers of John Jay.” Columbia University Libraries. <<http://www.columbia.edu/cu/lweb/eresources/archives/jay/>>.

Selected Works by John Jay

- *Address to the People of Great Britain* (1774)
- *The Federalist Papers* (with James Madison and Alexander Hamilton) (1787–1788)
- *Letter to Elias Boudinot* (1819)

JOHN JAY (1745–1829)

To contend for our own liberty, and to deny that blessing to others,
involves an inconsistency not to be excused.

—John Jay



The sun was setting as the lone gentleman exited his stagecoach and entered the chamber. He had wanted to get there the day before, but transportation problems prevented him from joining his fellow Supreme Court Justices on time for their first assembly. It was February 2, 1790.

It was quiet and still, his footsteps the only sound in the courtroom. He looked up at the bench and pondered the challenges he would face as he took his place there. This was where John Jay would assume his role as the first Chief Justice of the United States Supreme Court. Just as George Washington would be defining the role of the executive branch as the new nation's first president, Jay knew his job would be to clarify the role of the judicial branch. He knew it would be a challenge, but he was ready for it—he had faced challenges before.



Background

John Jay was born in 1745 in New York City to a prominent family and graduated from King's College, now called Columbia University, in 1764. Four years later, he began to practice law. Through his work, Jay gained notoriety throughout New York. Britain's aggressive response to the Boston Tea Party convinced Jay to support the Patriots' efforts against taxation without representation. He became well known in the patriotic circles of New York. As a result, Jay was elected to serve in the First Continental Congress. He soon wrote the *Address to the People of Great Britain*. In the *Address*, he argued that the American colonists deserved the same rights and privileges that British subjects received in England. He defended many rights that would later be guaranteed in the Bill of Rights—property, jury trial, due process, and religion.

Although Jay opposed many British policies, he did not support independence from Great Britain in 1774. Like many of his time, he favored a more moderate approach. He passionately opposed Parliament's actions toward the colonies. However, he hoped the colonies could restore their relationship with Britain.

At the Second Continental Congress in 1775, he encouraged a moderate approach to Britain. The majority of the delegates insisted on independence instead. Jay resigned from Congress rather than sign the Declaration of Independence. But he joined his fellow Patriots once the rest of the colonists rallied behind the action.

Like many Congressmen, Jay returned to state matters in 1777. He drafted the New York constitution and served as Chief Justice of New York. New Yorkers selected Jay as a delegate to the Continental Congress in 1778. His fellow delegates elected him to serve as President of the Assembly, the highest office in the nation under the Articles of Confederation.

The Diplomat and Chief Justice

Following his one-year term as president of the Assembly, Congress sent Jay on a series of diplomatic missions. He visited Spain to gain financial aid and official recognition of

the new nation, but his efforts failed. He then set off to join Benjamin Franklin and John Adams in Paris to successfully establish a peace treaty with Great Britain.

Jay returned to the United States of America in 1784. While he was away, Congress appointed him the secretary of foreign affairs. He found the job difficult to execute under the Articles of the Confederation, though, because each state was free to act alone. He had no power to make meaningful treaties with other nations. The experience strengthened his resolve for a centralized federal government. Consequently, he wrote five of *The Federalist Papers* to encourage ratification of the new Constitution. Upon ratification of the new Constitution in 1789, George Washington appointed Jay Chief Justice of the first Supreme Court. Jay accepted the position and began clarifying the role of the judiciary in the new government.

Jay's Treaty

In 1794, George Washington asked Jay to take a leave of absence from the Court. The British recently had seized American trading ships in the French West Indies, a large source of trade revenue and goods for the United States. The end of trade in the region could have crippled America's fragile economy. Washington hoped to avoid economic destruction by striking an agreement with the British. He sent Jay to do the job.

Jay's Treaty, as it would be called, was signed in June 1794. A number of treaty provisions favored the United States, but some Americans believed the British had gained an economic advantage. Reaction to the treaty was so hostile that Jay was burned in effigy in some cities. The United States secured equal access to Great Britain and the East Indies, but received harsh restrictions on trade in the British West Indies. In contrast, the treaty granted Britain the status of most favored nation in trade at American ports.

In addition, Jay failed to secure compensation for slaves taken by the British, or protection from imprisonment for American sailors. Southern slave-owners believed that Jay, an abolitionist, did not support compensation. They accused Jay of intentionally compromising on the issue. Many Americans claimed Jay had given the British everything they wanted and had weakened American power as a result. While the treaty received a negative reception in the United States, it accomplished the United States's goal of avoiding war with Britain.

A Governor's Efforts

Upon returning to the United States from England in 1795, John Jay learned he had been elected governor of New York. He never requested or agreed to the job. Nevertheless, he permanently resigned from the Supreme Court and took on the position. As governor, Jay fought for the emancipation of slaves. Throughout his years of public service, Jay had battled against slavery. In 1785, he created the New York Manumission Society. The Society organized anti-slavery actions, such as lawsuits and boycotts. As a result of consistent efforts, Jay signed an emancipation bill passed by the New York legislature in 1799.

The next year, John Adams requested that Jay return to his role of Chief Justice, but the retired governor refused. Jay had grown disillusioned with the court system, especially with judges serving on lower courts. He decided not to participate until the system was reformed. Instead, he spent his remaining days on his farm in Westchester until his death in 1829.



Reading Comprehension Questions

1. On which diplomatic missions did Congress send Jay, and why?
2. To which position did George Washington appoint Jay following the ratification of the Constitution?
3. What was the goal of Jay's Treaty? Did the treaty accomplish that goal?

Critical Thinking Questions

4. Why did Jay refuse to sign the Declaration of Independence? Do you agree with his decision? Why or why not?
5. John Jay consistently fought against slavery at both a local and national level. What steps did he take to further the abolition of slavery?

VOCABULARY AND CONTEXT QUESTIONS

John Jay's letter to Elias Boudinot (1819)

1. **Vocabulary:** *Use context clues to determine the meaning or significance of each of these words and write their definitions:*
 - a. concur
 - b. migration
 - c. importation
 - d. competent
 - e. toleration
 - f. repugnant
 - g. discordancy

2. **Context:** *Answer the following questions.*
 - a. When was this document written?
 - b. Who wrote this document?
 - c. What type of document is this?
 - d. What was the purpose of this document?

IN HIS OWN WORDS: JOHN JAY ON SLAVERY

John Jay's letter to Elias Boudinot (1819)

17 Nov. 1819

I have received the copy of a circular letter which, as chairman of the committee appointed by the late public meeting at Trenton respecting slavery, you were pleased to direct to me on the 5th instant. Little can be added to what has been said and written on the subject of slavery. I concur in the opinion that it ought not to be introduced nor permitted in any of the new States; and that it ought to be gradually diminished and finally abolished in all of them.

To me the constitutional authority of the Congress to prohibit the migration and importation of slaves into any of the States, does not appear questionable. The first article of the Constitution specifies the legislative powers committed to the Congress. The ninth section of that article has these words:

“The migration or importation of such persons as any of the now existing States shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808. But a tax or duty may be imposed on such importations, not exceeding ten dollars for each person.”

I understand the sense and meaning of this clause to be, that the power of the Congress, although competent to prohibit such migration and importation, was not to be exercised with respect to the then existing States (and them only) until the year 1808; but that the Congress were at liberty to make such prohibition as to any new State, which might, in the mean time, be established, and further, that from and after that period, they were authorized to make such prohibition, as to all the States, whether new or old.

It will, I presume, be admitted, that slaves were the persons intended. The word slaves was avoided, probably on account of the existing toleration of slavery, and of its discordancy with the principles of the Revolution; and from a consciousness of its being repugnant to the following positions in the Declaration of Independence, viz.:

“We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among them are life, liberty, and the pursuit of happiness.”

Source: “John Jay to Elias Boudinot.” The Founders’ Constitution.
<http://press-pubs.uchicago.edu/founders/documents/a1_9_1s19.html>.

ANALYSIS: FOUNDING DOCUMENTS

Directions: Fill in the main ideas of John Jay’s argument in his letter to Elias Boudinot. Next, analyze the main points of his argument by answering the questions below each document.

A. *Article 1, Section 9 of the U.S. Constitution (1787)*

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.

John Jay’s Main Idea:

What three points does Jay make in his letter about Article 1, Section 9 of the U.S. Constitution and the question of slavery in the new states?

1.

2.

3.

B. *The Declaration of Independence (1776)*

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

John Jay’s Main Idea:

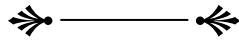
According to Jay, what three positions of the Declaration of Independence is slavery “repugnant to”?

1.

2.

3.

LIMITED GOVERNMENT



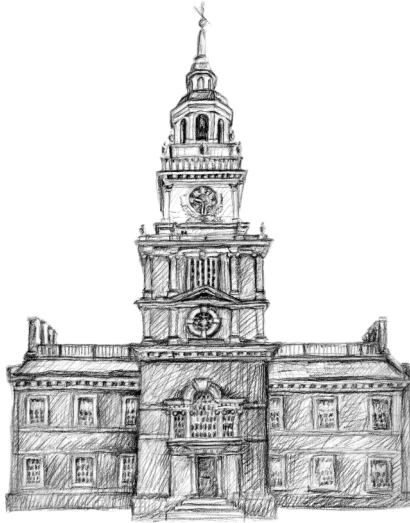
Thomas Jefferson accurately represented the convictions of his fellow colonists when he observed in the Declaration of Independence that a government, to be considered legitimate, must be based on the consent of the people and respect their natural rights to “life, liberty and the pursuit of happiness.” Along with other leading members of the founding generation, Jefferson understood that these principles dictated that the government be given only limited powers that, ideally, are carefully described in written charters or constitutions.

Modern theorists like John Locke and the Baron de Montesquieu had been making the case for limited government and separation of powers during the century prior to the American Revolution. Colonial Americans were quite familiar with Locke’s argument from his *Two Treatises of Government* that “Absolute Arbitrary Power, or Governing without settled standing Laws, can neither of them consist with the ends of Society and Government. . . .” Locke added that the reason people “quit the freedom of the state of Nature [is] to preserve their Lives, Liberties and Fortunes.” Civil society has no higher end than to provide for the safety and happiness of the people, and this is best done under a system of known rules or laws that apply equally to “the Rich and Poor, . . . the Favorite at Court, and the Country Man at plough.” For his part, Montesquieu argued that only where governmental power is limited in scope, and then parceled out among different departments, will people be free from oppression. Constitutional government, for modern natural rights theorists, should be limited government dedicated to the comfortable preservation of the people—that is, to their security, freedom, and prosperity.

John Adams echoed the beliefs of many Americans when he argued that only by creating a balance of forces within the government could the people hope to escape despotism and misery. An unchecked legislature, he observed, would be capable not only of making tyrannical laws, but of

executing them in a tyrannical manner as well. In his famous draft of a constitution for the commonwealth of Massachusetts, Adams declared that the “legislative, executive and judicial power shall be placed in separate departments, to the end that it might be a government of laws, and not of men.”

This document, along with his *Defence of the Constitutions of Government of the United States of America*, containing a strong case for checks and balances in government, were well known to the delegates who attended the Constitutional Convention of 1787.



James Wilson, one of the foremost legal scholars of the founding period and a delegate from Pennsylvania at the Constitutional Convention, agreed with Adams’ insistence that the power of government should be divided to the end of advancing the peace and happiness of the

people. In the words of Wilson, “In government, the perfection of the whole depends on the balance of the parts, and the balance of the parts consists in the independent exercise of their separate powers, and, when their powers are separately exercised, then in their mutual influence and operation on one another. Each part acts and is acted upon, supports and is supported, regulates and is regulated by the rest.”

Both the Articles of Confederation and the Constitution of the United States provided for governments with limited powers. As John Jay had discovered as America’s secretary of foreign affairs, the power of the central government was severely limited under the Articles and, hence, could be trusted to a unitary legislative department. Fear of governmental tyranny and a desire to preserve the power enjoyed by the new states resulted in the creation of a central government that could not effectively oversee interstate commerce or do other things that were critical to ensuring the safety and happiness of the people. In a letter to Edmund Randolph at the end of 1786, George Washington bemoaned the “awful situation of our affairs” which he attributed to “the want of sufficient power

in the foederal head.” Washington quickly joined the movement to create a new governmental system that was equal to “the exigencies of Union,” to quote from the instructions given the delegates to the Constitutional Convention of 1787.

The Constitution of 1787 grew out of a plan drafted largely by James Madison during the winter and spring before the Convention. The “Virginia Plan” proposed a central government that was supreme over the states. Evidence that the national government was to be entrusted with considerable power could be found in the provisions for a bicameral legislature and independent executive and judicial departments.

The delegates who attended the Constitutional Convention were sufficiently versed in modern political theory to understand that they would have to divide the power of the national government if they intended to entrust it with real authority over the lives of the people and the states. They understood the dangers of imparting considerable political power to a unitary sovereign. In this connection, there was never any doubt in their minds that they should create a government of “delegated and enumerated” powers, that is, that the government should only be entrusted with specified (enumerated) powers that derived directly from the people. While they worried about the “turbulence and follies” of democracy, they recognized that government had to be based on the consent of the people to be legitimate.

The Virginia Plan anticipated the bicameral legislature and independent executive and judicial departments found in the United States Constitution today. Building on Madison’s model, the delegates assigned responsibilities to the departments based on their peculiar characteristics. The six-year term of senators, for example, seemed to make this a proper institution to involve in foreign policy (e.g., ratification of treaties) since senators would have more time than members of the House of Representatives to acquaint themselves with international affairs and their longer terms and larger constituencies (entire states) also would give them more freedom to attend to matters other than the immediate interests of constituents back home. The House of Representatives was entrusted with the important power to initiate revenue (taxation) bills precisely because the members of

this chamber are tied so closely to the people by short terms and small districts.

In addition to matching powers and governmental responsibilities, the delegates were careful to position each department to “check and balance” the other departments. Examples are the executive’s veto power, the congressional impeachment power, and the judicial review power entrusted to the Supreme Court, the only national court formally established by the Constitution. Although in good Lockean fashion the legislative department was designed to be the preeminent department, it was still subjected to checks by the other branches of the government. Separation of powers as well as the system of checks and balances were devices for reducing the threat of governmental tyranny, not excluding legislative tyranny.

However, the constitutional arrangement, put into its final wording by Gouverneur Morris, was not driven entirely by a desire to eliminate the threat of tyrannical government. The system of separated and divided powers also was intended to promote competence in government. The president can employ his veto not only to check legislative action that he considers irresponsible, but to provoke Congress to improve a legislative enactment. The Senate can use its authority to ratify presidential nominations of cabinet officers or judges to ensure that qualified candidates are named to fill these positions.

Writing in *Federalist No. 9*, Alexander Hamilton identified the principle of separated and divided powers, along with checks and balances, as among the inventions of the new science of politics that had made republican government defensible. Madison described in *Federalist No. 51* the benefits of the governmental arrangement represented in the new Constitution: “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.” Significantly, Anti-Federalists as well as Federalists agreed that governmental powers should be limited and that these powers should be subject to internal as well as external checks.

There was never any doubt in their minds that they should create a government of “delegated and enumerated” powers . . .

It is important to emphasize that the Framers settled on an arrangement that divided yet blended the legislative, executive, and judicial powers. This facilitates interdepartmental checking while promoting mature deliberation. Their aim was to create a decent and competent democracy, something beyond mere non-tyrannical government. They placed the whole of the government, and even the people, under constitutional limitations. The Constitution is the supreme law of the land, not the enactments of Congress or the order of the president or the momentary will of the people. As Chief Justice Marshall declared in *Marbury v. Madison* (1803), “The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation.” Even the

desires of the people are held in check by the Constitution. The political system still meets the criteria of democratic government, however, since the people hold the power, through their representatives, to amend the Constitution.

The paradigm of constitutional government embraced by the American people in 1787, that is, limited government based on the consent of the people and committed to the protection of fundamental rights, has become the dominant model throughout the world. The rhetoric of rights, whether couched in the language of natural rights or human rights, is universally appealing. Also universally accepted is the argument that rights are most secure when governmental powers are limited in scope and subject to internal and external checks.

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Suggestions for Further Reading

Frohnen, Bruce (ed.). *The American Republic: Primary Sources*. Indianapolis: Liberty Fund, 2002.
Kurland, Philip B. and Ralph Lerner (eds.) *The Founders' Constitution*. Indianapolis: Liberty Fund, 1987.
Mansfield, Harvey C., Jr. *Taming the Prince*. New York: The Free Press, 1989.
McDonald, Forrest. *A Constitutional History of the United States*. New York: Franklin Watts, 1982.
Storing, Herbert J. *What the Anti-Federalists Were For*. Chicago: University of Chicago Press, 1981.
Wood, Gordon. *The Creation of the American Republic, 1776–1787*. New York: W.W. Norton, 1969.

FOUNDING DOCUMENTS

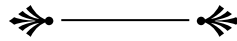
A. *Article 1, Section 9 of the U.S. Constitution (1787)*

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.

B. *The Declaration of Independence (1776)*

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

INTRODUCTORY ESSAY: EXPLAINING THE FOUNDING



In 1760, what was to become the United States of America consisted of a small group of colonies strung out along the eastern seaboard of North America. Although they had experienced significant economic and demographic growth in the eighteenth century and had just helped Britain defeat France and take control of most of North America, they remained politically and economically dependent upon London. Yet, in the next twenty-five years, they would challenge the political control of Britain, declare independence, wage a bloody war, and lay the foundations for a trans-continental, federal republican state. In these crucial years, the colonies would be led by a new generation of politicians, men who combined practical political skills with a firm grasp of political ideas. In order to better understand these extraordinary events, the Founders who made them possible, and the new Constitution that they created, it is necessary first to understand the political ideas that influenced colonial Americans in the crucial years before the Revolution.



“Parliaments and Juries.” “By the first,” Penn argued, “the subject has a share by his chosen Representatives in the Legislative (or Law making) Power.” Penn felt that the granting of consent through Parliament was important because it ensured that “no new Laws bind the People of England, but such as are by common consent agreed on in that great Council.”

In Penn’s view, juries were an equally important means of limiting arbitrary power. By serving on juries, Penn argued, every freeman “has a share in the *Executive* part of the Law, no Causes being tried, nor any man adjudged to loose [*sic*] Life, member or Estate, but upon the *Verdict* of his Peers or Equals.” For Penn, “These two grand Pillars of English Liberty” were “the *Fundamental vital Priviledges* [*sic*]” of Englishmen.

The other aspect of their government that seventeenth-century Englishmen celebrated was a system that was ruled by laws and not by men. As Penn rather colorfully put it: “In France, and other Nations, the meer [*sic*] Will of the Prince is Law, his Word takes off any mans Head, imposeth Taxes, or seizes a mans Estate, when, how and as often as he lists; and if one be accused [*sic*], or but so much as suspected of any Crime, he may either presently Execute him, or banish, or Imprison him at pleasure.” By contrast, “*In England*,” Penn argued, “the Law is both the measure and the bound of every Subject’s Duty and Allegiance, each man having a fixed Fundamental-Right born with him, as to Freedom of his Person and Property in his Estate, which he cannot be deprived of, but either by his Consent, or some Crime, for which the Law has impos’d such a penalty or forfeiture.”

This common law view of politics understood political power as fundamentally *limited* by Englishmen’s rights and privileges. As a result, it held that English kings were bound to rule according to known laws and by respecting the inherent rights of their subjects. It also enshrined the concept of consent as the major means to the end of protecting these rights. According to Penn and his contemporaries, this system of government—protecting as it did the “unparallel’d

THE COMMON LAW AND THE RIGHTS OF ENGLISHMEN

The political theory of the American colonists in the seventeenth and eighteenth centuries was deeply influenced by English common law and its idea of rights. In a guide for religious dissenters written in the late seventeenth century, William Penn, the founder of Pennsylvania, offered one the best contemporary summaries of this common-law view of rights. According to Penn, all Englishmen had three central rights or privileges by common law: those of life, liberty, and property. For Penn, these English rights meant that every subject was “to be freed in Person & Estate from Arbitrary Violence and Oppression.” In the widely used language of the day, these rights of “Liberty and Property” were an Englishman’s “Birthright.”

In Penn’s view, the English system of government preserved liberty and limited arbitrary power by allowing the subjects to express their *consent* to the laws that bound them through two institutions:

Privilege [*sic*] of Liberty and Property”—had made the English nation “more free and happy than any other People in the World.”

The Founders imbibed this view of English rights through the legal training that was common for elites in the eighteenth-century Anglo-American world. This legal education also made them aware of the history of England in the seventeenth century, a time when the Stuart kings had repeatedly threatened their subjects’ rights. In response, many Englishmen drew on the common law to argue that all political power, even that of a monarch, should be limited by law. Colonial Americans in the eighteenth century viewed the defeat of the Stuarts and the subsequent triumph of Parliament (which was seen as the representative of subjects’ rights) in the Glorious Revolution of 1688 as a key moment in English history. They believed that it had enshrined in England’s unwritten constitution the rule of law and the sanctity of subjects’ rights. This awareness of English history instilled in the Founders a strong fear of arbitrary power and a consequent desire to create a constitutional form of government that limited the possibility of rulers violating the fundamental liberties of the people.

The seriousness with which the colonists took these ideas can be seen in their strong opposition to Parliament’s attempt to tax or legislate for them without their consent in the 1760s and 1770s. After the Revolution, when the colonists formed their own governments, they wrote constitutions that included many of the legal guarantees that Englishmen had fought for in the seventeenth century as a means of limiting governmental power. As a consequence, both the state and federal constitutions typically contained bills of rights that enshrined core English legal rights as fundamental law.

NATURAL RIGHTS

The seventeenth century witnessed a revolution in European political thought, one that was to prove profoundly influential on the political ideas of the American Founders. Beginning with the Dutch writer Hugo Grotius in the early 1600s, several important European thinkers began to construct a new understanding of political theory that argued that all men by *nature* had equal rights, and that governments were formed for the sole purpose of protecting these natural rights.

The leading proponent of this theory in the English-speaking world was John Locke (1632–1704). Deeply involved in the opposition to the Stuart kings in the 1670s and 1680s, Locke wrote a book on political theory to justify armed resistance to Charles II and his brother James. “To understand political power right,” Locke wrote, “and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.” For Locke, the state of nature was “a state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another.”

The political theory of the American colonists in the seventeenth and eighteenth centuries was deeply influenced by English common law and its idea of rights.

Although this pregovernmental state of nature was a state of perfect freedom, Locke contended that it also lacked an impartial judge or umpire to regulate disputes among

men. As a result, men in this state of nature gathered together and consented to create a government in order that their natural rights would be better secured. Locke further argued that, because it was the people who had created the government, the people had a right to resist its authority if it violated their rights. They could then join together and exercise their collective or popular sovereignty to create a new government of their own devising. This revolutionary political theory meant that ultimate political authority belonged to the people and not to the king.

This idea of natural rights became a central component of political theory in the American colonies in the eighteenth century, appearing in numerous political pamphlets, newspapers, and sermons. Its emphasis on individual freedom and government by consent combined powerfully with the older idea of common law rights to shape the political theory of the Founders. When faced with the claims of the British Parliament in the 1760s and 1770s to legislate for them without their consent, American patriots invoked both the common law and Lockean natural rights theory to argue that they had a right to resist Britain.

Thomas Jefferson offers the best example of the impact that these political ideas had on the founding. As he so eloquently argued in the Declaration of Independence: “We hold these

truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That 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 abolish it, and to institute new Government, laying its foundations on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.”

This idea of natural rights also influenced the course of political events in the crucial years after 1776. All the state governments put this new political theory into practice, basing their authority on the people, and establishing written constitutions that protected natural rights. As George Mason, the principal author of the influential Virginia Bill of Rights (1776), stated in the document’s first section: “All men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.” The radical implications of this insistence on equal natural rights would slowly become apparent in postrevolutionary American society as previously downtrodden groups began to invoke these ideals to challenge slavery, argue for a wider franchise, end female legal inequality, and fully separate church and state.

In 1780, under the influence of John Adams, Massachusetts created a mechanism by which the people themselves could exercise their sovereign power to constitute governments: a special convention convened solely for the purpose of writing a constitution, followed by a process of ratification. This American innovation allowed the ideas of philosophers like Locke to be put into practice. In particular, it made the people’s natural rights secure by enshrining them in a constitution which was not changeable by ordinary legislation. This method was to influence the authors of the new federal Constitution in 1787.

RELIGIOUS TOLERATION AND THE SEPARATION OF CHURCH AND STATE

A related development in seventeenth-century European political theory was the emergence of arguments for religious toleration and the separation of church and state. As a result of the bloody religious wars between Catholics and Protestants that followed the Reformation, a few thinkers in both England and Europe argued that governments should not attempt to force individuals to conform to one form of worship. Rather, they insisted that such coercion was both unjust and dangerous. It was unjust because true faith required voluntary belief; it was dangerous because the attempts to enforce religious beliefs in Europe

had led not to religious uniformity, but to civil war. These thinkers further argued that if governments ceased to enforce religious belief, the result would be civil peace and prosperity.

Once again the English philosopher John Locke

played a major role in the development of these new ideas. Building on the work of earlier writers, Locke published in 1689 *A Letter Concerning Toleration*, in which he contended that there was a natural right of conscience that no government could infringe. As he put it: “The care of Souls cannot belong to the Civil Magistrate, because his Power consists only in outward force; but true and saving Religion consists in the inward persuasion [*sic*] of the Mind, without which nothing can be acceptable to God. And such is the nature of the Understanding, that it cannot be compell’d to the belief of any thing by outward force. Confiscation of Estate, Imprisonment, Torments, nothing of that nature can have any such Efficacy as to make Men change the inward Judgment that they have formed of things.”

These ideas about the rights of conscience and religious toleration resonated powerfully in the English colonies in America. Although the Puritans in the seventeenth century had originally attempted to set up an intolerant commonwealth where unorthodox religious belief would be prohibited, dissenters like Roger Williams challenged them and argued that true faith could not be the product of coercion. Forced to flee by the Puritans, Williams established the colony of Rhode Island, which offered religious toleration to all and had no state-supported church. As the Puritan Cotton Mather sarcastically remarked,

Natural rights became a central component of political theory in the American colonies . . . , appearing in numerous political pamphlets, newspapers, and sermons.

Rhode Island contained “everything in the world but Roman Catholics and real Christians.” In addition, Maryland, founded in the 1630s, and Pennsylvania, founded in the 1680s, both provided an extraordinary degree of religious freedom by the standard of the time.

In the eighteenth century, as these arguments for religious toleration spread throughout the English-speaking Protestant world, the American colonies, becoming ever more religiously pluralistic, proved particularly receptive to them. As a result, the idea that the government should not enforce religious belief had become an important element of American political theory by the late eighteenth century. After the Revolution, it was enshrined as a formal right in many of the state constitutions, as well as most famously in the First Amendment to the federal Constitution.

By reading the classics, the American Founders were introduced to an alternate political vision, one that legitimated republicanism.

COLONIAL SELF-GOVERNMENT

The political thinking of the Founders in the late eighteenth century was also deeply influenced by the long experience of colonial self-government. Since their founding in the early seventeenth century, most of the English colonies in the Americas (unlike the French and Spanish colonies) had governed themselves to a large extent in local assemblies that were modeled on the English Parliament. In these colonial assemblies they exercised their English common law right to consent to all laws that bound them.

The existence of these strong local governments in each colony also explains in part the speed with which the Founders were able to create viable independent republican governments in the years after 1776. This long-standing practice of self-government also helped to create an indigenous political class in the American colonies with the requisite experience for the difficult task of nation building.

In addition to the various charters and royal instructions that governed the English colonies, Americans also wrote their own Founding documents. These settler covenants were an early type of written constitution and they provided an important model for the Founders in the late eighteenth century as they sought to craft a new constitutional system based on popular consent.

CLASSICAL REPUBLICANISM

Not all the intellectual influences on the Founders originated in the seventeenth century. Because many of the Founders received a classical education in colonial colleges in the eighteenth century, they were heavily influenced by the writings of the great political thinkers and historians of ancient Greece and Rome.

Antiquity shaped the Founders’ political thought in several important ways. First, it introduced them to the idea of republicanism, or government by the people. Ancient political thinkers from Aristotle to Cicero had praised republican self-government as the best political system. This classical political thought was important for the Founders as it gave them grounds to dissent from the heavily monarchical political culture of eighteenth-century England, where even the common law jurists who defended subjects’ rights against royal power believed strongly in monarchy. By reading the classics, the American Founders were introduced to an alternate political vision, one that legitimized republicanism.

The second legacy of this classical idea of republicanism was the emphasis that it put on the moral foundations of liberty. Though ancient writers believed that a republic was the best form of government, they were intensely aware of its fragility. In particular, they argued that because the people governed themselves, republics required for their very survival a high degree of civic virtue in their citizenry. Citizens had to be able to put the good of the whole (the *res publica*) ahead of their own private interests. If they failed to do this, the republic would fall prey to men of power and ambition, and liberty would ultimately be lost.

As a result of this need for an exceptionally virtuous citizenry, ancient writers also taught that republics had to be small. Only in a small and relatively homogeneous society, they argued, would the necessary degree of civic virtue be forthcoming. In part, it was this classical teaching about the weakness of large republics that animated the contentious debate over the proposed federal Constitution in the 1780s.

In addition to their reading of ancient authors, the Founders also encountered republican ideas in

the political theory of a group of eighteenth-century English writers called the “radical Whigs.” These writers kept alive the republican legacy of the English Civil War at a time when most Englishmen believed that their constitutional monarchy was the best form of government in the world. Crucially for the Founding, these radical Whigs combined classical republican thought with the newer Lockean ideas of natural rights and popular sovereignty. They thus became an important conduit for a modern type of republicanism to enter American political thought, one that combined the ancient concern with a virtuous citizenry and the modern insistence on the importance of individual rights.

These radical Whigs also provided the Founders with an important critique of the eighteenth-century British constitution. Instead of seeing it as the best form of government possible, the radical Whigs argued that it was both corrupt

and tyrannical. In order to reform it, they called for a written constitution and a formal separation of the executive branch from the legislature. This classically inspired radical Whig constitutionalism was an important influence on the development of American republicanism in the late eighteenth century.

CONCLUSION

Drawing on all these intellectual traditions, the Founders were able to create a new kind of republicanism in America based on equal rights, consent, popular sovereignty, and the separation of church and state. Having set this broad context for the Founding, we now turn to a more detailed examination of important aspects of the Founders’ political theory, followed by detailed biographical studies of the Founders themselves.

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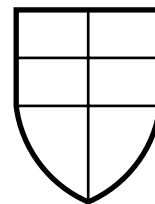
Suggestions for Further Reading

- Bailyn, Bernard. *The Ideological Origins of the American Revolution*. Cambridge, Mass.: Harvard University Press, 1967.
- Lutz, Donald. *Colonial Origins of the American Constitution: A Documentary History*. Indianapolis, Ind.: Liberty Fund, 1998.
- Reid, John Phillip. *The Constitutional History of the American Revolution*. Abridged Edition. Madison: The University of Wisconsin Press, 1995.
- Rossiter, Clinton. *Seedtime of the Republic: The Origins of the American Tradition of Political Liberty*. New York: Harcourt Brace, 1953.
- Zuckert, Michael. *Natural Rights and the New Republicanism*. Princeton, N.J.: Princeton University Press, 1994.

ADDITIONAL CLASSROOM ACTIVITIES

Visual Assessment

1. **Founders Posters**—Have students create posters for either an individual Founder, a group of Founders, or an event. Ask them to include at least one quotation (different from classroom posters that accompany this volume) and one image.
2. **Coat of Arms**—Draw a coat of arms template and divide into 6 quadrants (see example). Photocopy and hand out to the class. Ask them to create a coat of arms for a particular Founder with a different criterion for each quadrant (e.g., occupation, key contribution, etc.). Include in the assignment an explanation sheet in which they describe why they chose certain colors, images, and symbols.
3. **Individual Illustrated Timeline**—Ask each student to create a visual timeline of at least ten key points in the life of a particular Founder. In class, put the students in groups and have them discuss the intersections and juxtapositions in each of their timelines.
4. **Full Class Illustrated Timeline**—Along a full classroom wall, tape poster paper in one long line. Draw in a middle line and years (i.e., 1760, 1770, 1780, etc.). Put students in pairs and assign each pair one Founder. Ask them to put together ten key points in the life of the Founder. Have each pair draw in the key points on the master timeline.
5. **Political Cartoon**—Provide students with examples of good political cartoons, contemporary or historical. A good resource for finding historical cartoons on the Web is <http://www.boondocksnet.com/gallery/political_cartoons.html>. Ask them to create a political cartoon based on an event or idea in the Founding period.



Performance Assessments

1. **Meeting of the Minds**—Divide the class into five groups and assign a Founder to each group. Ask the group to discuss the Founder's views on a variety of pre-determined topics. Then, have a representative from each group come to the front of the classroom and role-play as the Founder, dialoguing with Founders from other groups. The teacher will act as moderator, reading aloud topic questions (based on the pre-determined topics given to the groups) and encouraging discussion from the students in character. At the teacher's discretion, questioning can be opened up to the class as a whole. For advanced students, do not provide a list of topics—ask them to know their character well enough to present him properly on all topics.
2. **Create a Song or Rap**—Individually or in groups, have students create a song or rap about a Founder based on a familiar song, incorporating at least five key events or ideas of the Founder in their project. Have students perform their song in class. (Optional: Ask the students to bring in a recording of the song for background music.)

Web/Technology Assessments

1. **Founders PowerPoint Presentation**—Divide students into groups. Have each group create a PowerPoint presentation about a Founder or event. Determine the number of slides, and assign a theme to each slide (e.g., basic biographic information, major contributions, political philosophy, quotations, repercussions of the event, participants in the event, etc.). Have them hand out copies of the slides and give the presentation to the class. You may also ask for a copy of the

presentation to give you the opportunity to combine all the presentations into an end-of-semester review.

- Evaluate Web sites**—Have students search the Web for three sites related to a Founder or the Founding period (you may provide them with a “start list” from the resource list at the end of each lesson). Create a Web site evaluation sheet that includes such questions as: Are the facts on this site correct in comparison to other sites? What sources does this site draw on to produce its information? Who are the main contributors to this site? When was the site last updated? Ask students to grade the site according to the evaluation sheet and give it a grade for reliability, accuracy, etc. They should write a 2–3 sentence explanation for their grade.
- Web Quest**—Choose a Web site(s) on the Constitution, Founders, or Founding period. (See suggestions below.) Go to the Web site(s) and create a list of questions taken from various pages within the site. Provide students with the Web address and list of questions, and ask them to find answers to the questions on the site, documenting on which page they found their answer. Web site suggestions:
 - The Avalon Project <<http://www.yale.edu/lawweb/avalon/avalon.htm>>
 - The Founders’ Constitution <<http://press-pubs.uchicago.edu/founders/>>
 - Founding.com <<http://www.founding.com/>>
 - National Archives Charters of Freedom <http://www.archives.gov/national_archives_experience/charters.html>
 - The Library of Congress American Memory Page <<http://memory.loc.gov/>>
 - Our Documents <<http://www.ourdocuments.gov/>>
 - Teaching American History <<http://www.teachingamericanhistory.org/>>

A good site to help you construct the Web Quest is: <<http://trackstar.hprtec.org>>

Verbal Assessments

- Contingency in History**—In a one-to-two page essay, have students answer the question, “How would history have been different if [Founder] had not been born?” They should consider repercussions for later events in the political world.
- Letters Between Founders**—Ask students to each choose a “Correspondence Partner” and decide which two Founders they will be representing. Have them read the appropriate Founders essays and primary source activities. Over a period of time, the pair should then write at least three letters back and forth (with a copy being given to the teacher for review and feedback). Instruct them to be mindful of their Founders’ tone and writing style, life experience, and political views in constructing the letters.
- Categorize the Founders**—Create five categories for the Founders (e.g., slaveholders vs. non-slaveholders, northern vs. southern, opponents of the Constitution vs. proponents of the Constitution, etc.) and a list of Founders studied. Ask students to place each Founder in the appropriate category. For advanced students, ask them to create the five categories in addition to categorizing the Founders.
- Obituaries and Gravestones**—Have students write a short obituary or gravestone engraving that captures the major accomplishments of a Founder (e.g., Thomas Jefferson’s gravestone). Ask them to consider for what the Founder wished to be remembered.
- “I Am” Poem**—Instruct students to select a Founder and write a poem that refers to specific historical events in his life (number of lines at the teacher’s discretion).

ADDITIONAL CLASSROOM ACTIVITIES

Each line of the poem must begin with “I” (i.e., “I am...,” “I wonder...,” “I see...,” etc.). Have them present their poem with an illustration of the Founder.

6. **Founder’s Journal**—Have students construct a journal of a Founder at a certain period in time. Ask them to pick out at least five important days. In the journal entry, make sure they include the major events of the day, the Founder’s feelings about the events, and any other pertinent facts (e.g., when writing a journal about the winter at Valley Forge, Washington may have included information about the troops’ morale, supplies, etc.).
7. **Résumé for a Founder**—Ask students to create a resume for a particular Founder. Make sure they include standard resume information (e.g., work experience, education, skills, accomplishments/honors, etc.). You can also have them research and bring in a writing sample (primary source) to accompany the resume.
8. **Cast of Characters**—Choose an event in the Founding Period (e.g., the signing of the Declaration of Independence, the debate about the Constitution in a state ratifying convention, etc.) and make a list of individuals related to the incident. Tell students that they are working for a major film studio in Hollywood that has decided to make a movie about this event. They have been hired to cast actors for each part. Have students fill in your list of individuals with actors/actresses (past or present) with an explanation of why that particular actor/actress was chosen for the role. (Ask the students to focus on personality traits, previous roles, etc.)

Review Activities

1. **Founders Jeopardy**—Create a Jeopardy board on an overhead sheet or handout (six columns and five rows). Label the column heads with categories and fill in all other squares with a dollar amount. Make a sheet that corresponds to the Jeopardy board with the answers that you will be revealing to the class. (Be sure to include Daily Doubles.)
 - a. Possible categories may include:
 - Thomas Jefferson (or the name of any Founder)
 - Revolutionary Quirks (fun Founders facts)
 - Potpourri (miscellaneous)
 - Pen is Mightier (writings of the Founders)
 - b. Example answers:
 - This Founder drafted and introduced the first formal proposal for a permanent union of the thirteen colonies. *Question: Who is Benjamin Franklin?*
 - This Founder was the only Roman Catholic to sign the Declaration of Independence. *Question: Who is Charles Carroll?*
2. **Who Am I?**—For homework, give each student a different Founder essay. Ask each student to compile a list of five-to-ten facts about his/her Founder. In class, ask individuals to come to the front of the classroom and read off the facts one at a time, prompting the rest of the class to guess the appropriate Founder.
3. **Around the World**—Develop a list of questions about the Founders and plot a “travel route” around the classroom in preparation for this game. Ask one student to volunteer to go first. The student will get up from his/her desk and “travel” along the route plotted to an adjacent student’s desk, standing next to it. Read a question aloud, and the first student of the two to answer correctly advances to the next stop on the travel route. Have the students keep track of how many places they advance. Whoever advances the furthest wins.

AN EIGHTEENTH-CENTURY GLOSSARY

Common Good: General conditions that are equally to everyone’s advantage. In a **republic**, held to be superior to the good of the individual, though its attainment ought never to violate the **natural rights** of any individual.

Democracy: From the Greek, *demos*, meaning “rule of the people.” Had a negative connotation among most Founders, who equated the term with mob rule. The Founders considered it to be a form of government into which poorly-governed **republics** degenerated.

English Rights: Considered by Americans to be part of their inheritance as Englishmen; included such rights as property, petition, and trials by jury. Believed to exist from time immemorial and recognized by various English charters as the Magna Carta, the Petition of Right of 1628, and the English Bill of Rights of 1689.

Equality: Believed to be the condition of all people, who possessed an equality of rights. In practical matters, restricted largely to land-owning white men during the Founding Era, but the principle worked to undermine ideas of deference among classes.

Faction: A small group that seeks to benefit its members at the expense of the **common good**. The Founders discouraged the formation of factions, which they equated with political parties.

Federalism: A political system in which power is divided between two levels of government, each supreme in its own sphere. Intended to avoid the concentration of power in the central government and to preserve the power of local government.

Government: Political power fundamentally limited by citizens’ rights and privileges. This limiting was accomplished by written charters or constitutions and bills of rights.

Happiness: The ultimate end of government. Attained by living in **liberty** and by practicing **virtue**.

Inalienable Rights: Rights that can never justly be taken away.

Independence: The condition of living in **liberty** without being subject to the unjust rule of another.

Liberty: To live in the enjoyment of one’s rights without dependence upon anyone else. Its enjoyment led to **happiness**.

Natural Rights: Rights individuals possess by virtue of their humanity. Were thought to be “**inalienable**.” Protected by written constitutions and bills of rights that restrained government.

Property: Referred not only to material possessions, but also to the ownership of one’s body and rights. Jealously guarded by Americans as the foundation of liberty during the crisis with Britain.

Reason: Human intellectual capacity and rationality. Believed by the Founders to be the defining characteristic of humans, and the means by which they could understand the world and improve their lives.

Religious Toleration: The indulgence shown to one religion while maintaining a privileged position for another. In pluralistic America, religious uniformity could not be enforced so religious toleration became the norm.

Representation: Believed to be central to republican government and the preservation of **liberty**. Citizens, entitled to vote, elect officials who are responsible to them, and who govern according to the law.

Republic: From the Latin, *res publica*, meaning “the public things.” A government system in which power resides in the people who elect representatives responsible to them and who govern according to the law. A form of government dedicated to promoting the **common good**. Based on the people, but distinct from a **democracy**.

Separation of Church and State: The doctrine that government should not enforce religious belief. Part of the concept of **religious toleration** and freedom of conscience.

Separation of Powers/Checks and Balances: A way to restrain the power of government by balancing the interests of one section of government against the competing interests of another section. A key component of the federal Constitution. A means of slowing down the operation of government, so it did not possess too much energy and thus endanger the rights of the people.

Slavery: Referred both to chattel slavery and political slavery. Politically, the fate that befell those who did not guard their rights against governments. Socially and economically, an institution that challenged the belief of the Founders in **natural rights**.

Taxes: Considered in English tradition to be the free gift of the people to the government. Americans refused to pay them without their consent, which meant actual **representation** in Parliament.

Tyranny: The condition in which **liberty** is lost and one is governed by the arbitrary will of another. Related to the idea of political **slavery**.

Virtue: The animating principle of a **republic** and the quality essential for a republic’s survival. From the Latin, *vir*, meaning “man.” Referred to the display of such “manly” traits as courage and self-sacrifice for the **common good**.

ANSWER KEY

3. “I feel so good and appreciated for the risks I take every day to defend my community. I am so glad Hancock is rallying others to support me.”
4. “He needs to take it easy. Why can’t he be more moderate? We can reconcile with Britain. We are Englishmen!”
5. “He is so wrong about me. I am not unfit to live in civil society; I am doing my job. If they’d stop acting like hoodlums, we wouldn’t have to treat them like hoodlums.”
6. “I wouldn’t have minded if he would have addressed the women, sisters, and mothers of the colonies. I also feel vaguely insulted at his calling it ‘effeminate’ to back down.”
7. “Wow, he’s making good points about what government should be about. I think the colonies need to unite against Britain.” Or “He’s being too radical. Massachusetts is risking alienating the other colonies.”

JOHN JAY

Handout A—John Jay (1745–1829)

1. Congress sent Jay to Spain for financial aid and recognition of the new nation, and he was sent to Paris to negotiate a peace treaty with Britain.
2. George Washington appointed Jay to be the first Chief Justice of the Supreme Court.
3. Jay’s Treaty accomplished its goal of avoiding war, but the treaty was unpopular because many people thought it was lopsided, making too many concessions to the British.
4. Jay refused to sign the Declaration of Independence because he believed in the colonies’ historical attachment and loyalty to Britain. He favored a moderate approach and hoped the colonies could reconcile their relationship with Britain. Some students may agree with his decision to hold to his personal

convictions even in the face of public pressure. Others may believe he should have yielded more quickly to the majority’s wishes.

5. Throughout his years of public service, Jay had battled against slavery. In 1785, he created the New York Manumission Society that advanced abolition on a local as well as state level through boycotts and lawsuits. As governor, Jay fought for the emancipation of slaves. As a result of consistent efforts, Jay signed an emancipation bill passed by the New York legislature in 1799. His state set an example for the nation.

Handout B—Vocabulary and Context Questions

1. Vocabulary
 - a. agree
 - b. entering the country
 - c. bringing
 - d. able
 - e. acceptance
 - f. inconsistent
 - g. contradiction
2. Context
 - a. This document was written in 1819.
 - b. John Jay wrote this document.
 - c. This is a letter.
 - d. The purpose of this document was to express Jay’s position on slavery in the new states.

Handout D—Analysis: Founding Documents

Jay’s main idea: Slavery should not be allowed in the new states, and should be gradually abolished in all the states.

- A.
1. Congress has the power to regulate, and it is implicit that Congress can make new regulations for NEW states.
 2. Congress can make new regulations for new and old states after 1808.
 3. “Persons” means “Slaves.”

ANSWER KEY

- B.
1. The Declaration of Independence states, “All men are created equal.”
 2. All people have the inalienable rights.
 3. Slavery abridges those rights to life, liberty and the pursuit of happiness.

GOUVERNEUR MORRIS

Handout A—Gouverneur Morris (1752–1816)

1. As a teenager, Morris’s right arm was badly burned when a pot of scalding water overturned on him. The arm was badly crippled for the rest of his life. Morris lost his left leg after a carriage accident in Philadelphia. His left ankle was caught in the spokes of a moving carriage’s wheel. Doctors amputated the leg just below the knee.
2. Aggravated by Congress’ failure to support the troops, Morris began to hint to some that the Continental Army itself might employ force if Congress did not act. In March 1783, the officers of the Continental Army assembled at a barn in Newburgh, New York. Talk of treason was in the air, as many officers whispered about marching on Philadelphia. Fortunately for the republic, Washington himself quelled the conspiracy by appearing at the gathering.
3. At the Convention, Morris became a leader of the nationalist bloc. He was the only delegate to make a lengthy speech against the institution of slavery. Morris was appointed to the Committee of Style as the debates ended. Morris worked on the document for four days to fashion a finished product that was more concise and clear than the draft given to him. He also glossed the wording of the Constitution so as to enhance the power of the new federal government. Most significantly, Morris began the Preamble with the phrase, “We the people,” to signal that the new government was not the creature of the states, but the handiwork of the entire nation.
4. Some students may list the following as Morris’s shortcomings: his propensity to engage in affairs; his encouraging the Continental Army to consider using force against Congress; his dismissive attitude toward the lower classes, demonstrated by his calling the people “reptiles.” Students might list the following as Morris’s strengths: his charm and intelligence; his moral vision, shown in his denunciation of slavery at the Philadelphia convention; his political skill, evidenced by the use of his position as writer of the Constitution to get what he wanted; his bravery during the Reign of Terror in Paris; his patriotism, demonstrated by his service to his state and country.
5. Some students will say yes, Morris had fought to make the federal government supreme over the states at the Constitutional Convention, yet secession contradicts this principle. Other students will say no, that states always retain the right of secession; this right is not related to the strength of the central government.

JAMES OTIS

Handout A—James Otis (1725–1783)

1. Writs of assistance were search warrants that gave customs officials broad authority to inspect ships, warehouses, and even private homes. Officials did not have to present evidence to a judge before a search was conducted. They also did not have to specify what they were looking for. Writs of assistance soon became one of the chief complaints of the colonists against the British government.
2. In defending the liberty of his fellow colonists, Otis appealed to both natural and English rights. He asserted that every man possessed inalienable rights of