



# Value of Civics and Constitutional Design

## What the Framers Modeled for an Age of Polarization

By Maureen Abbey Scorese

The U.S. has a unique system—a first of its kind—that was revolutionary at its inception. The framers of the U.S. Constitution conceived the system of three branches of government during the Constitutional Convention in Philadelphia in 1787, 11 years after the Declaration of Independence. Influenced in part by Baron de Montesquieu’s philosophy, advocating for the separation of a government’s powers to protect individuals’ liberty,<sup>1</sup> the Founding Fathers worked to create a system that would (1) prevent tyranny by dividing power; (2) balance efficiency in governance with protections for individual freedom(s); and (3) ensure that no single person or group could dominate the government. They believed the British King had been a tyrant, and they wanted to ensure that no single person or institution could dominate the newly established federal government.

Each of the three branches of the U.S. government have distinct powers that overlap in a way to create interdependence, therein creating checks and balances. In this way, the branches have distinct roles and core powers; each is designed to be dependent so that there exists a check on the power, control and authority of the other branches.

This type of government did not exist at the time it was created. The initial government that formed after the Declaration of Independence, under the Articles of Confederation (1781), put more power in the states, in an attempt to create a true democracy and to give each state—and its unique population—more control over their locale, and a very weak

that could work effectively for a diverse population. Creating the United States and its government structure as a federal republic was truly an experiment.

A brief refresher on the civics, and how the Founding Fathers limited federal powers and balanced other powers with state governments, is just as important as understanding the interdependence and checks and balances of the three branches of government.

### A Concise Civics Overview

The legislative branch enacts federal statutes. Article I, Section 8 enumerates Congress's principal powers, including taxation; regulation of interstate and foreign commerce; war powers and national

as commander in chief, conducts foreign affairs, and approves or vetoes legislation. The executive branch supervises the agencies that Congress creates.

The judicial branch interprets and applies federal law. It includes the Supreme Court and the lower federal courts. The judiciary resolves cases and controversies and reviews challenged governmental action for consistency with the Constitution and federal law.

Together, the Constitution assigns distinct core functions to each branch while equipping each with mechanisms to check the others, thereby limiting the concentration of power.

Each state establishes its own government under their state constitutions,

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federal government. This state-driven government created diverging systems—including different financial systems, which resulted in business and trade fights, economic difficulties, debt problems for the federal government (because it has no taxing authority), and diplomatic weakness for the country, to name a few. The Founding Fathers convened again after years of trying out this new democratic government, in Philadelphia at the Constitutional Convention. They engaged in heated debate with constructive dialogue. It included leaders' acknowledgement of their peers' differing views—with real compromise by all involved—for creating a government

defense; coin money; establish post offices and inferior federal courts; and securing patents and copyrights. Congress may also enact laws "necessary and proper" to carry its enumerated powers into execution. Constitutional constraints appear in Article I, Section 9 and the Tenth Amendment, including limits on suspension of habeas corpus, and prohibitions on bills of attainder and ex post facto laws; the Tenth Amendment reserves undelegated powers to the states or the people.

The executive branch executes and enforces federal law, and includes the President, Vice President, Cabinet, and executive agencies. The President serves



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typically including an executive (usually a governor), legislature, and judiciary. While most of this article focuses on the federal government, the state governments are equally important. Federalism divides power between federal and state governments, with some powers exclusive to one, with many that are shared (with federal prevailing in the event of a conflict of laws).

It is notable that the U.S. Constitution was intended to divide powers between the states and federal government, to ensure states have authority and power to govern local matters while granting the federal government limited, enumerated powers. It was important in our young nation to create a federal government that had limited and specific powers. By this time, Americans realized that the nation needed to give some powers to the federal government (especially tax, regulate commerce and provide for national defense) to survive and thrive.

### **The Judiciary's Function in Enforcing Constitutional Boundaries**

The federal judiciary is an essential branch of the government to maintain the balance of power. It adjudicates cases and controversies and, through judicial review, enforces constitutional limits on legislative and executive action. In doing so, it safeguards core rights and structural protections, particularly where majority decision-making threatens minority interests. The judiciary also ensures that statutes and government conduct

comport with the Constitution and governing law.

The courts may set aside federal and state enactments and executive action that exceed constitutional or statutory authority. That review function impacts the legislators in how they draft laws. It also influences executive action, including agency actions and directives. In this way, the courts act to preserve the separation of powers by keeping each branch within its constitutional lane.

### **Trends in Judicial Structure and Court Administration**

In recent years, courts have operated amid heightened political and legislative scrutiny, with increased attention to the structure, authority, and administration of the judiciary. A Brennan Center for Justice report identified dozens of bills introduced in 20 states in 2024; the measures addressed issues such as judicial selection processes, disciplinary oversight, enforcement of court rulings, venue rules, and the allocation or reassignment of judgeships. Six of the proposals were signed into law in Kentucky, Louisiana, North Carolina, Tennessee, Utah and Wyoming.<sup>2</sup>

Concurrently, redistricting efforts in several states (most recently in Texas and California), have drawn increased public and legal scrutiny, particularly where district boundaries are alleged to favor specific political outcomes or raise concerns about representational equity.<sup>3</sup>

While not illegal, these measures can raise questions about their potential

effects on judicial independence and institutional balance. The practical effect is to subject courts to partisan objectives and, at times, to coordinated pressure from organized interests, including well-resourced industry and advocacy groups operating with limited public visibility. Such developments have prompted broader discussion about how changes to court structure and authority may affect the separation of powers. When the judiciary's independence is compromised, the Constitution's system of checks and balances deteriorates: one branch's capacity to restrain the others diminishes, and governmental power becomes increasingly concentrated in the actors able to shape—or circumvent—judicial decision-making.

### **Acts of Violence and Threats to the Judiciary**

Threats, harassment and attempted intimidation directed at judges have intensified in New Jersey and nationwide.<sup>4</sup> The targeted 2020 attack on U.S. District Judge Esther Salas' home—killing her son, Daniel Anderl, and wounding her husband—led to laws to shield judges' information and additional protections (and funding) for judges' personal security, including Daniel's Law and the federal Daniel Anderl Judicial Security and Privacy Act.

Notwithstanding these efforts to protect judges, the threats to federal judges continue to rise with online harassment and “doxxing” accelerating exposure risks. Since February 2025, judges in

multiple states reported anonymous pizza deliveries to their residences—sometimes with messages implying the sender knows where the judge lives.<sup>5</sup> Law enforcement agencies and judicial organizations have characterized such incidents as potential intimidation efforts, and investigations remain ongoing.<sup>6</sup>

Historically, there have been many challenges to the U.S. government through special interest groups, extreme partisan politics, and secret subversive groups.<sup>7</sup> While summarizing these events is beyond the scope of this article, the important theme in history is this: the country and its government survives because it is the people that come together to vote, to speak, to engage in the difficult debates. It is vital to continue the same debates and dialogues that has enabled our government to survive these 250 years.

### **The Role of Education and Critical Thinking in Our Society**

Observers across disciplines have noted changes in public discourse, including increased polarization and reduced emphasis on deliberative dialogue. Statements from our government leaders are marked by threats and intimidation, and efforts to chill speech. Debates over the scope and limits of free speech and protest activity have intensified, with legal, institutional, and cultural dimensions. There have been attacks on selected members of our community, educators and law firms and professionals based on the viewpoints they express or the clients they represent. The news and information environment presents challenges, including the rapid spread of misinformation, deepfakes, and sensationalized coverage in lieu of verified reporting with fact-checking and genuine engagement.<sup>8</sup> Ultimately, the current trends in public discourse create a path to shock, outrage and polarization, rather than

dialogue which nurtures respect (for differences) and understanding.

In today's climate, meaningful, respectful dialogue is harder to sustain. Instead of testing claims through questioning and evidence, debate is increasingly framed as tribal conflict—"us versus them"—with spillover into workplaces, communities, and families.

The central question is not merely how we arrived here, but how institutions and citizens can re-commit to basic democratic norms: viewpoint tolerance, objective evaluation of facts, and good-faith dialogue as the mechanism for resolving disagreement.

Education plays a pivotal role in any society. It is a measure of better public health, reduced crime, more employment (lower unemployment) and increased tax revenue. If you educate the individuals in society, society will improve. Similarly, if you take care of the poorest in a society and give them the tools to work and succeed, it leads to a more successful society overall.

The framers of the U.S. Constitution had a high level of education for their era. Over half attended college; others had a combination of school and private tutors (typical for the time). All were well-read, and intellectually accomplished. Education gives individuals critical thinking skills, cultural understanding, and empathy. This develops people that are informed and engaged in their community, which in turn creates a stronger society.

### **Why Critical Thinking is So Important**

Critical thinking is a core building block to a society. Critical thinking requires skepticism, curiosity, and disciplined inquiry. It requires people to test or question statements before accepting them. It requires a listener to fact-check

the information, the source, prior to reaching conclusions based on evidence rather than impulse or blind acceptance of what they hear.

Lawyers practice critical thinking daily: plaintiffs and defendants will describe the same events differently, and effective advocacy depends on probing each account, corroborating through third-party sources, and evaluating the record before offering advice or taking a position.

More broadly, critical thinking equips individuals to assess credibility, identify bias, and break down complex problems into workable solutions. It strengthens decision-making by demanding that options be weighed and the assumptions be challenged.

Its civic value is equally significant. Critical thinking promotes different perspectives and civil dialogue, reduces susceptibility to manipulation, and helps counter the "us versus them" reflex that fuels polarization. When critical thinking collapses, grievance can harden into absolutism—and, in extreme cases, into violence. The lesson is not speculative diagnosis, but institutional and cultural: we should reinforce habits of evidence-based reasoning and respectful engagement before rhetoric escalates into harm.

We all need the skill of critical thinking.

### **Institutional Endurance and Civic Responsibility**

Recent surveys indicate a decline in public confidence in the courts and related legal institutions in the United States.<sup>9</sup> Surveys and institutional indices reflect ongoing public discussion about how legal institutions perform their roles amid political pressures and public scrutiny.<sup>10</sup> This includes conversation about how courts, legislatures, and executive branches interact within the constitutional system.

Many civic scholars suggest that public understanding of constitutional structures and civic processes — including critical thinking and informed dialogue—contributes to institutional resilience and informed participation.<sup>11</sup> Those habits will create space in our government for dialogue, compromise, and decisions that are oriented toward the public interest rather than partisan or personal advantage.

The Founding Fathers modeled that discipline. The Constitution emerged from sustained debate, hard bargaining, and repeated returns to the table—not unanimity. It was the product of contested drafting and structural compromise, informed by the lived experience of arbitrary power and a determination to prevent its return.

Scholars and civic educators often emphasize that public engagement, civic education, and informed participation are important elements of a healthy constitutional democracy.<sup>12</sup> A pluralistic society requires confidence rather than fear: curiosity about neighbors, tolerance for disagreement, and a shared commitment to constitutional norms that protect everyone—especially when we disagree. ■

was an Enlightenment philosopher who authored “The Spirit of the Laws”. Born in France in 1689, he is most known for the idea of the separation of powers, and writings based on the theory of mixed governments formulated by the Romans. He also opposed punishing people who criticized the government, noting the difference between the expression of mere ideas and overt acts against the government.

- 2.. Brennan Ctr. for Just., *Legislative Assaults on State Courts: 2024* (2024), [brennancenter.org/our-work/research-reports/legislative-assaults-state-courts-2024](https://brennancenter.org/our-work/research-reports/legislative-assaults-state-courts-2024)
3. *Spectrum News 1 Ohio*, “Redistricting, Gerrymandering and a Proposed Constitutional Amendment” (Nov. 19, 2025), [spectrumnews1.com/oh/columbus/news/2025/11/19/redistricting-gerrymandering-constitutional-amendment](https://spectrumnews1.com/oh/columbus/news/2025/11/19/redistricting-gerrymandering-constitutional-amendment)
4. *Associated Press*, “Threats Against Federal Judges Alarm U.S. Marshals,” [apnews.com/article/threats-federal-judges-us-marshals-alarming-a6a5398d6d09cf057eb5317592c8d299](https://apnews.com/article/threats-federal-judges-us-marshals-alarming-a6a5398d6d09cf057eb5317592c8d299)
5. Devlin Barrett & Ann E. Marimow, “Judges Report Threats and Intimidation, Including Anonymous Deliveries,” *Wash. Post* (May 11, 2025), [washingtonpost.com/politics/2025/05/11/justice-judges-threats-intimidation-pizza-deliveries/](https://www.washingtonpost.com/politics/2025/05/11/justice-judges-threats-intimidation-pizza-deliveries/)
6. Sen. Durbin May 21, 2025, Washington Letter, Request for DOJ to Probe Anonymous Pizza Deliveries to Judges
7. *Democracy Awakening*, by Heather Cox Richardson © 2023 is a good reference for this overview of the history of democracy in the U.S.
8. Nat’l Libr. of Med., “Misinformation and the Information Environment,” in *Public Health and Digital Media* (2023), [ncbi.nlm.nih.gov/books/NBK609027/](https://ncbi.nlm.nih.gov/books/NBK609027/)
9. Gallup, “Americans Pass Judgment on the Courts” (2024) [news.gallup.com/poll/653897/americans-pass-judgment-courts.aspx](https://news.gallup.com/poll/653897/americans-pass-judgment-courts.aspx)
10. Pew Rsch. Ctr., “Public Trust in Government: 1958–2025” (Dec. 4, 2025), [pewresearch.org/politics/2025/12/04/public-trust-in-government-1958-2025/](https://pewresearch.org/politics/2025/12/04/public-trust-in-government-1958-2025/)
11. Hon. Judith S. Kaye, “The Withering of Public Confidence in the Courts,” *Judicature* (2024), [judicature.duke.edu/articles/the-withering-of-public-confidence-in-the-courts/](https://judicature.duke.edu/articles/the-withering-of-public-confidence-in-the-courts/)
12. *Id.*

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## Endnotes

1. Baron de Montesquieu (Charles Louis de Secondat De Montesquieu)