

Separation of Powers

The separation of powers among three independent branches of government is a defining characteristic of the presidential system that characterizes the institutions of some constitutional democracies, such as Argentina, Brazil, Panama, the Philippines, and the United States of America. The U.S. Constitution is the original functional model for separation of powers among the legislative, executive and judicial branches of government.

The legislative branch of the U.S. government, Congress, has the power, according to Article 1 of the Constitution, to make certain kinds of laws. In Article 2, the Constitution says that the executive branch, headed by the President, has the power to enforce or carry out laws. The judicial branch, headed by the Supreme Court, is established in Article 3 of the Constitution to interpret and apply the laws in court cases that come before it. Further, the first article of the Constitution divides legislative power between the two houses of Congress, the Senate and the House of Representatives. A majority vote in both houses is required for a bill to become law.

The Constitution provides to each branch of the government means to share in the power of the other branches. The mechanisms by which the three separate branches are able to restrain the others are called checks and balances.

There are several ways that one branch of the government checks the actions of another branch to maintain a balance of powers, so that no branch can dominate the others. The President, the chief of the executive branch, can check Congress by vetoing bills it has passed. But the President's veto can be overturned by a subsequent two-thirds vote of both houses of Congress. The President appoints executive branch officials and federal judges, including Justices of the Supreme Court. But the Senate, one part of the legislative branch, must approve the President's appointments by a majority vote; if not, the President's appointments are rejected.

The President is the commander in chief of the armed forces. But only Congress can enact legislation to provide funds to the armed forces and their commanders for their military operations. The Constitution grants power to the President to make treaties with foreign governments, but the Senate has the power to confirm or reject them. Additional examples of the separation and sharing of powers among the executive and legislative branches, involving checks and balances, are found in Articles 1 and 2 of the Constitution.

The judicial branch of government uses its power to interpret the Constitution and the laws made under it in order to check the other two branches of government and to maintain the separation of powers among the three branches. For example, the Supreme Court uses judicial review to prevent either the legislative or executive branch from violating the Constitution. The Court can declare null and void actions of the Congress or the President that exceed or contradict their powers as expressed in the Constitution.

The principle of judicial independence, established in Article 3 of the Constitution, prevents the other two branches from intimidating the judicial branch and impeding it from properly checking them if they overstep their constitutional boundaries. The Constitution provides for lifetime terms of office and prohibits Congress from punishing judges by reducing the level of payment for their services in order to buttress the judicial branch's independence.

Separation and sharing of powers among the three branches, through checks and balances, is the basic constitutional means for achieving limited government and thereby protecting the people from governmental abuses. Each branch of a constitutional government has some influence over the actions of the others, but no branch can exercise its powers without cooperation from the others. The constitution of a presidential democracy prevents any one branch from encroaching upon the domains of the other branches.

Under the system of checks and balances, no branch of the government can accumulate too much power. But each branch, and the government generally, is supposed to have enough power to do what the people expect of it. So, the government is both limited and empowered; neither too strong for survival of the people's liberty nor too limited to be effective in maintaining order, stability, and security for the people.

During the founding era of the United States, James Madison expressed the importance of separated powers in a constitutional government. In the 47th paper of *The Federalist*, Madison wrote, "The accumulation of all powers, legislative, executive and judiciary, in the hands of one, a few, or many, and whether hereditary, self appointed, or elected, may justly be pronounced the very definition of tyranny." In the next *Federalist* paper, Madison cautioned that unless the separate branches of government "be so far connected and blended [balanced] as to give each a constitutional control [check] over the others the degree of separation...essential to a free government can never in practice be duly maintained."

The parliamentary system of constitutional democracy also includes a distribution of powers in government among the legislative, executive, and judicial functions. The parliament enacts the laws, and the executive officers of the government, the prime minister in tandem with the various ministers of executive departments, execute the laws. However, the prime minister and other executive ministers derive their authority from the parliament and are answerable to it. In most parliamentary systems, there is an independent judiciary department that can declare null and void acts of the parliament or the executive ministers that violate the constitution. However, the parliamentary form of constitutional democracy is not based on a strict system of separated and shared powers.

Advocates of parliamentary democracy claim that it is more efficient than the presidential system, and that it is more responsive to the will of the people. They assert that the complex system of checks and balances among three separate and independent branches of government slows down decision making and sometimes thwarts the will of the majority of citizens, instead of directly and readily expressing it.

Defenders of separated and shared powers emphasize the importance of deliberate decision making in support of their system of constitutional democracy. They believe that that compromises necessary to achieve agreement among different groups empowered with checks on the actions of the other groups result in a government that cannot act recklessly.

Justice Louis D. Brandeis of the U.S. Supreme Court nicely summed up the justification for separated and shared powers in the Constitution. In his dissenting opinion in the 1926 case *Myers v. United States*, Justice Brandeis wrote,

The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.

Answer the following questions on a separate piece of paper:

1. Define the following terms: judicial independence, buttress, thwart, judicial review,
2. Compare and contrast constitutional democracy to parliamentary constitutional democracy.
3. Explain in your own words what Justice Louis D. Brandeis stated.