

Law Day 2018

Separation of Powers Framework for Freedom



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The submission deadline is January 12, 2018.

Separation of Powers: Framework for Freedom

Every year, around the first of May, Oklahomans join with all Americans to observe Law Day, a day set aside to celebrate our nation's great heritage of liberty, justice and equality under the law. As Americans, we are proud of our heritage as a free nation and know that the law safeguards our rights and freedoms. In 2018, we are focusing on our system of government and how the different parts protect our rights and one another. We encourage everyone to gain a greater understanding of how the three branches of government interact and work together to maintain balance and safeguard individual liberty.

After the Revolution: Articles of Confederation

The United States fought diligently during the Revolutionary War to free itself from the strong control of the British crown. After the new country declared its independence, the Continental Congress met to draft a system of government. This first document was called the Articles of Confederation. Out of fear of a powerful centralized government, like the United Kingdom, the articles gave the states much more power than the federal government. Each state could make its own taxes and raise its own militia.

The new country was dysfunctional and could not support itself under the articles, neither financially nor politically. The second Continental Congress met in Philadelphia in 1787 to draft the Constitution. Delegates were still reluctant to put a lot of power in the national government, but agreed that separating the powers would maintain balance and prevent tyranny.

The Constitution

When the Constitution was drafted, it established a doctrine of separation of powers among the three branches of government. To stop one branch of government from having too much power over another, the Constitution explains a system of checks and balances. This guarantees that each branch serves as a constraint on, and is constrained by, the powers of the other branches. Although our system stands as a model for other nations, the framers of the Constitution were not the first people to think of this idea. It was first articulated about a century before by Montesquieu, a 17th century French lawyer and political philosopher.

The Federalist Papers

The Federalist Papers are a collection of essays that were written to encourage states to ratify the recently drafted Constitution. Although the essays were written by three men who are very well-known today, they were signed under the pseudonym "Publius." The authors of the essays are Alexander Hamilton, James Madison and John Jay. One essay, "Federalist 51," written by James Madison, explained how the three separate branches of government would protect the rights of the people, and how each branch would provide "checks and balances" over the other two. Madison advocated that each branch should be as independent as possible and that if a branch wanted to keep its own independence, it must not try to take the powers of another branch. One of the most famous quotes summarizes this idea: "ambition must be made to counteract ambition."

Article I: Legislative Branch

The legislative branch, also known more simply as Congress, was created in Article I of the Constitution. Section 1 states, "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." The main duty of the legislative branch is to make the laws. Congress, the branch most closely tied with the will of the American people, has many powers which are listed in the Constitution. Some examples of these powers are to decide what taxes should be paid, regulate commerce, govern militaries and provide for things we use every day, like post offices and roads. Congress is also the only branch that has the power to declare war on another country – not even the president can make that decision.

Under the Nondelegation Doctrine, Congress cannot delegate its power to make laws to any other agency. Section 9 of the Constitution also states that Congress is specifically not allowed to do other things, mostly related to taxes and commerce. Also prohibited is granting anyone a title of nobility – there has never been a king or queen of the United States!

In addition to the powers that are specifically mentioned, or enumerated, in the Constitution, the Supreme Court has said that Congress can do other things as long as they are not prohibited by the Constitution or it is not a power given to one of the other two branches. This viewpoint has been articulated through the Necessary and Proper Clause, which is also called the Elastic Clause. In one famous court case, *McCulloch v. Maryland*, the Chief Justice John Marshall said, "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional."

Article II: Executive Branch

The primary role of the executive branch is to execute, or carry out, the laws that are written by Congress. The leader of the executive branch is the president. Other members of this branch are the vice president and members of the cabinet, such as the secretary of state, secretary of veterans affairs and the attorney general. Unlike Congress, the president is able to delegate execution of the laws to other individuals he or she appoints.

The president is the commander in chief of the Armed Forces, meaning that he or she directs the military when necessary. The office of the president also makes treaties with foreign nations, but consent of the Senate is required to do so. The heads of government agencies are also chosen by the president, at the direction of Congress. The president is able to grant pardons to U.S. citizens for crimes they have committed.

Every year, the president gives a speech to Congress and the American people, updating them on the progress of the country. This speech is called the State of the Union. The speech serves as a report to Congress about how laws have been applied and what issues may need more focus. The president can make recommendations to Congress about things he or she believes are important and should be debated by the legislature over the next year.

Article III: Judicial Branch

The third branch of the U.S. government is the judicial branch, or the courts, as created in Article III of the Constitution. The primary role of the judicial branch is to interpret the laws. The courts look at the laws that have been written by Congress and executed by the president, and decide how they should be applied fairly. For example, Congress may write a law defining a crime and it is up to a court to decide whether or not an accused person committed that crime. The right to a trial by jury in criminal cases is protected by Article III. The court can also decide on the punishment for a person who committed the crime.

The highest court in the United States is called the Supreme Court. It has nine members, or justices, who decide important cases. The president appoints justices and other federal judges, and every nomination must be approved by the Senate. The Supreme Court can decide which cases it wants to hear from the lower federal, or district, courts, which are created by Congress. A federal district court can only hear a case if there is an actual "case or controversy." This means that a court will not listen to an argument about something that might happen in the future, but it must be a problem that already happened and affected a person's rights.

The federal courts of the judicial branch also have the sole power to hear any cases involving ambassadors from foreign countries, those arising under treaties to which the U.S. is a party, a case involving maritime law (related to the sea and oceans) and when different states or people from different states disagree. The courts have original jurisdiction over these cases, meaning that Article III courts are the only bodies that can hear and decide these issues.

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Checks and Balances

In order to make sure that one branch does not become too powerful or take over the other two branches, the framers created a system of checks and balances. Even though the branches have different powers, each one has oversight in certain areas over the others. John Adams recognized the need to balance these powers in order to protect liberty: "It is by balancing each of these powers against the other two, that the efforts in human nature toward tyranny can alone be checked and restrained, and any degree of freedom preserved in the constitution." Three prominent examples of this system are the veto power, judicial review and impeachment.



Veto Power

Congress writes the laws that we follow in the United States. Once Congress approves a bill in both the Senate and the House of Representatives, it is sent to the president to sign so that it can go into effect. However, if the president does not agree with the law or wants parts of it to be changed, he or she can exercise veto power. The veto stops the law from going into effect. President George Washington issued the first veto on April 5, 1792.

Even if the executive branch vetoes a bill, the legislative branch has another opportunity to pass the bill. This is called overriding a veto. To override the president's veto, two-thirds of the members in both the House and the Senate must vote for the bill. If this happens, the bill will pass and become a law. The first time Congress successfully overrode a presidential veto was March 3, 1845, during the term of President John Tyler.

Judicial Review

When a law that Congress has written becomes the center of disagreement between different groups of people, the courts have the power to decide whether the law is unconstitutional. The Constitution did not directly say that the courts have the power to review laws, but one Supreme Court case called *Marbury v. Madison* said that the courts implicitly had this power under the Constitution. The case started when Mr. Marbury was appointed to serve as a judge in Washington, D.C., but the papers that would make his job official were not delivered. Mr. Marbury asked the Supreme Court to force James Madison to deliver the papers.

The court held that even though Madison's refusal to deliver the papers was illegal, they could not force him to do so. Instead, the court said the law that allowed Mr. Marbury to bring his case, the Judiciary Act of 1789, was unconstitutional. Congress had written the law to expand the court's jurisdiction beyond what the Constitution would allow. Chief Justice John Marshall included this famous quote in the opinion: "It is emphatically the province and duty of the [judicial branch] to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each."

Impeachment

Impeachment is the process by which a government official is formally charged with a crime. It does not necessarily mean that the official will be removed from office or convicted of the crime. This happens through a different process. The power to impeach is given to the legislative branch through the Constitution. The decision on whether to bring charges begins in the House of Representatives. A resolution is written to authorize an investigation into the questionable conduct and it is referred to a committee for discussion. If the committee finds that the conduct is impeachable, a document called Articles of Impeachment are drafted and presented to the entire House of Representatives. The house must vote to impeach by a simple majority.

After the house votes to impeach, the case is presented to the Senate and a trial is held, with both sides having an opportunity to present their defense and call witnesses.

There must be a two-thirds majority vote in the Senate for a conviction. If there is a conviction, the official is removed from office. In the history of the United States, only 19 federal officials have been impeached, including two presidents. Of those 19 officials, seven were acquitted, three resigned and nine were removed from office.

Separation of Powers in Oklahoma

Just like the federal government, Oklahoma's government is divided into three branches: the legislature, the executive and the judiciary. The system is established by the Oklahoma Constitution and the state government is based in Oklahoma City.



Oklahoma Legislature

The Oklahoma Legislature consists of a Senate and House of Representatives. The Senate has 48 members, constituting the 48 senatorial districts across Oklahoma. Each senator serves a four-year term. The House of Representatives has 101 members, one for each house district. These members are elected for two-year terms. The Legislature has the power to create taxes, borrow money and raise a state militia. The Legislature may also write bills to raise revenue for the states, but these measures can only start in the house.

Oklahoma Executive

The head of the executive branch in Oklahoma is the state governor, who is elected to a four-year term and may serve twice. In addition to the governor, there are over 300 agencies, commissions and boards that make up the executive branch. Oklahoma also has independent executive offices, which are elected statewide, and who are often consulted by the governor and the legislature. Some examples of these offices are the Oklahoma attorney general, Oklahoma state treasurer and the Oklahoma labor commissioner.

Oklahoma Judiciary

The Supreme Court of Oklahoma is the highest court in the state, charged with interpreting the laws and the state constitution. This court handles all civil matters, and the Court of Criminal Appeals is the highest court in the state for criminal cases. This is a unique system, which only exists in Oklahoma and Texas. Judges and justices are nominated by the Oklahoma Judicial Nominating Commission, and then are appointed to the bench by the governor.



History of Law Day

Law Day was conceived by the late Hicks Epton, a lawyer from Wewoka, Oklahoma, and a past president of the Oklahoma Bar Association. President Dwight D. Eisenhower established Law Day nationally by presidential proclamation in 1958. On this occasion, he said, "It is fitting that the American people should remember with pride and vigilantly guard the great heritage of liberty, justice, and quality under the law. It is our moral and civil obligation as free men and as Americans to preserve and strengthen that great heritage."

The first of May was set aside in 1961 by a Joint Resolution of Congress as a "special day of celebration by the American people in appreciation of their liberties and the reaffirmation of their loyalty to the United States of American" and as an occasion for "rededication to the ideals of equality and justice under the laws."

Since the first observance, the American Bar Association, the national voluntary organization of the legal profession, has acted as the national sponsor of Law Day. State, county, and local bar associations organize individual projects throughout the country. Many national organizations also recognize Law Day, including the National Education Association, National Governors' Association, United States Conference of Mayors, Boy Scouts and Girl Scouts of America, and civic/service clubs such as Rotary International and Kiwanis International.