



The U.S. Constitution establishes a system of government with distinct and independent branches—congress, the presidency, and the Supreme Court. Our Constitution also defines the powers for the legislative, executive, and judicial branches of our government and outlines how they interact. These three separate branches share power, and each branch serves as a check on the power of the others.

Join us over the next several days (weeks) as we explore the ideas of separation of powers and checks and balances and how they set up a framework for freedom. Yet, this framework is not self-executing. We the people must continually act to ensure that our constitutional democracy endures, preserving our liberties and advancing our rights.

*Next installment: **Separation of Powers & Checks and Balances***

# ***Separation of Powers & Checks and Balances***

French philosopher, Charles Montesquieu, coined the phrase “separation of powers” in his 1748 treatise, *The Spirit of the Laws*. In it, Montesquieu advocated for a system that divided and balanced the power of government among the classes, so as to create a form of government that was not led by a ruling class, single monarch or ruler.

Our founding fathers were well read and familiar with Montesquieu’s writings as well as those of other political philosophers. James Madison, known as the Father of the Constitution, believed keeping the three branches separated was fundamental to the preservation of liberty. In *Federalist No. 47* he wrote, “The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many... may justly be pronounced the very definition of tyranny.”

When the framers drafted the US Constitution, they created three different branches of government to administer three different types of power and were clear to write down specifically what powers each branch holds.

The legislative branch or Congress, divided into two houses, the Senate and the House of Representatives, makes the laws. The executive branch, including the president, vice president and numerous executive departments (i.e. State, Treasury, and Education) enforces the law. And the judicial branch interprets the laws through the Supreme Court and other lower federal courts.

Within the separation of powers, each branch of government has “checks and balances” over the other two. For example, Congress makes the laws, but the President can veto them and the Supreme Court can declare them unconstitutional. The president enforces the law, but Congress must approve executive appointments and the Supreme Court rules whether executive action is constitutional. The Supreme Court can strike down actions by both the legislative and executive branches, but the president nominates Supreme Court justices and the Senate confirms or denies these nominations.

With the ratification of the Bill of Rights in 1791, the 10th Amendment states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

**Read recent news reports, in-print or online, look for examples of checks and balances at work among the three branches of our federal government**

***Next: The Legislative Branch***



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# The Legislative Branch

Article I of the Constitution establishes the legislative (or lawmaking) branch of the federal government made up of the House of Representatives and the Senate. This is known as a bicameral legislature. Members of each are voted into office by the citizens in each state.

Members of Congress, senators and representatives, are chosen by direct election - although vacancies in the Senate may be filled by an appointment by that state's governor.



Congress has 535 voting members: 435 representatives and 100 senators. The House of Representatives also has six non-voting members representing US territories and the District of Columbia (Washington, D.C.).

Members of the House of Representatives serve two-year terms representing the people of a single congressional district. Congressional districts are allotted to states by population using census data.

Each state, regardless of population or size, has two senators which are elected for six-year terms. These terms are staggered so that every two years approximately one-third of the Senate is up for election.

The legislative branch of government is solely responsible for writing and passing federal laws, for declaring war and appropriating a budget - the money necessary to operate the federal government.

Congress confirms or rejects Presidential nominations for heads of federal agencies, federal judges, and the Supreme Court. This work serves to check the other two branches of government.

**Activities of U.S. Congress men and women are frequently reported in the news. Read through several editions of the newspaper and other sources for reports about what our Senators or local representatives are doing. Do you agree with their actions? If so, why? If not, why not?**

*Next: The Executive Branch*



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# ***The Executive Branch***

Article II of the Constitution establishes the executive branch of the federal government, which carries out and enforces federal laws. The executive branch includes the president, vice president, cabinet members, executive departments, independent agencies, and other boards, commissions, and committees. The vice president becomes president if the sitting president is disabled, removed from office or dies.



The power of the executive branch is vested in the President of the United States, who also acts as head of state and Commander-in-Chief of the armed forces. The president nominates ambassadors and other officials to help run the government, along with Supreme Court justices and other federal judges. The president can also make treaties (agreements) with other countries, which must be ratified by two-thirds of the Senate.

The president has the power either to sign legislation into law or to veto bills enacted by Congress, although Congress may override a veto with a two-thirds vote of both houses. The president can issue executive orders, which direct the actions of federal agencies or clarify and further existing laws. The president also has unlimited power to extend pardons and clemencies for federal crimes, except in cases of impeachment.

Fifteen executive departments — each led by an appointed member of the president's Cabinet — carry out the day-to-day administration of the federal government and enforcement of federal laws. These departments and agencies include a wide range of organizations such as the Department of Defense, the Environmental Protection Agency, the Social Security Administration and the Securities and Exchange Commission.

Including members of the armed forces, the executive branch employs more than 4 million Americans.

**In print or online look for news about the president or other members, agencies or departments of the executive branch.  
Share your findings as a class.**

*Next installment: **The Judicial Branch***



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# The Judicial Branch

Article III of the Constitution establishes the judicial branch or federal court system. It is comprised of the Supreme Court and other federal courts. The Bill of Rights protects individual rights including the guarantee that every person accused of wrongdoing has the right to a fair trial before a competent judge and a jury of one's peers.



The judicial branch has the sole power to interpret the law, determine the constitutionality of the law, and to apply it to individual cases. All laws in the country must follow the Constitution.

The judicial branch includes justices of the Supreme Court and federal judges. Currently, the Supreme Court is made up of nine judges, called justices, who are nominated by the president and confirmed by the Senate. The Supreme Court is the highest court in the land and the only part of the federal judiciary specifically required by the Constitution.

The justices and federal judges remain in office for life, until they retire, or are removed from office. They can only be removed from office by impeachment from the House of Representatives and a conviction by the Senate after a trial.

If the Supreme Court rules that a law passed by Congress, a state government, or an executive order made by the president is unconstitutional, then the law can no longer be enforced. The legislative branch can attempt to rewrite and enact the law in a way that is constitutional. The decisions made by the Supreme Court apply to all states. This is one of the “checks” of the judicial branch on the other branches of government.

It is the judicial branch's responsibility to ensure that everyone is treated the same in court – because everyone is entitled to due process (fair treatment) in the eyes of the law which is guaranteed by the 5<sup>th</sup> and 14<sup>th</sup> Amendments.

**Look for modern examples of due process of law - the protection of one's life, liberty or property - in news reports of ongoing court cases in-print or online.**

*Next installment: **Citizens and the Fourth Estate***



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# Citizens and the Fourth Estate

The Preamble of the Constitution starts with the words, "We the People." Under the Constitution, the power to govern comes directly from the people via free and open elections of government officials by the citizens of our country. While it is true that the right to vote was hard fought by many, including African Americans and women, the Constitution established the foundation for the arguments to ultimately extend voting rights to all qualified citizens.



Also guaranteed in the Constitution are the freedoms under the First Amendment including the freedom of the press. Supreme Court Justice Hugo Black, in his concurring opinion in the landmark case about the publishing of the Pentagon Papers - *New York Times Co. v United States* (1971), wrote, "In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government."

While, the First Amendment protects the right to protest, dissent, and petition the government for a redress of grievances, these rights cannot be exercised without the information a free press provides to the public. In order for citizens to thoughtfully participate in governing, they must be know what their government leaders are doing. American citizens and a free press together act as government watchdogs to ensure our elected officials and government agents act in our best interest. Together they are the fourth branch of our democracy, frequently referred to as the Fourth Estate.

**Look for news reports, in-print or online, that inform the public of government actions at the local, state or federal level. Imagine our world without a free press. What would we know about our government without the media?**

For more resources based on this year's Law Day theme go to <https://tinyurl.com/LawDayED3-12>



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