

Separation of Powers in the U.S. Government

Dr. M Jashim Uddin

NSU

Introduction

- Why separation of powers?
- Because of the extent of modern states in area and population, and the wide range of interests with which their governments deal, distribution of power among various institutions is necessary.
- Who will implement the laws and commands of the state?
- *The will of the state*
- These will be implemented by various institutions.
- In case of dispute, laws must be interpreted and applied in individual cases. For these purposes, the powers of government are distributed among organs; Legislative, Executive and Judicial.

Definition of Separation of Powers

- These organs are closely related to one another.
- The legislative mainly makes the laws, the executive implement them and the Judiciary interprets them.
- *Definition of Separation of power:*
- The functions of the government should be performed by different bodies of persons, that each department should be limited to its own sphere of action without encroaching upon the others and that it should be independent within that sphere, is called the theory of Separation of power.

Checks and Balances

- However, each branch must have defined abilities to check the powers of the other branches. This idea is called “Separation of Power”.
 - *Definition of Checks and Balances*
 - A system that allows each branch of a government to veto acts of another branch so as to prevent any one branch from exerting too much power.
 - Checks and balances ensure that the government is truly democratic and requires cooperation between the branches of government.
- ❑ What is the spirit of the Separation Power?
- To check tyranny and make power balance;
 - To secure individual liberty and property

Spirit of Separation of Powers

- In the 16th Century, Jean Bodin argued that judicial functions should be entrusted to independent magistrates.
- Separation of power is a political doctrine originating in the writings of Montesquieu in “The Spirit of the Laws” in 1748 where he argued for a constitutional government with three separate branches; legislative, executive and judicial.
- He held that if these powers or any of them are united in the same hands, individual liberty is threatened.

Separation of Power

The Origins of Parliaments

- Political institutions become more complex and differentiated as they become more modern.
- 1. Primitive clans mostly had a single leader to govern them; Tribes added councils to debate major problems and adjudicate disputes.
- 2. City-state such as Athens had assemblies that combined legislative, executive and judicial functions.
- 3. In the Middle Ages, the prevailing feudal system was a balance among a monarch, nobles, and leading churchmen.
- Ambitious Monarchs, who were often at war, desperately needed revenues. Some of them started calling assemblies of notables to levy taxes. In return for their “power of purse,” the assemblies got a modest input into royal politics.

The Origin of Parliaments

- Such were the beginnings of the British Parliament, which had two houses; Lords for peers and church leaders, and Commons for knights and burghers)
- Gradually Legislatures grew in power and were able to resist monarch's absolute demands; Henry VIII developed a partnership with Parliament in 16th Century to pass laws to break England away from the Roman Catholic Church in Rome.
- By the 17th Century, Parliament considered itself coequal with the monarch and even supreme in the area of taxes.

The Origin of Parliaments

- The English Civil War was a fight between royalists and parliamentarians to control powers. In 1649, Parliament decided the issue by trying and beheading Charles I.
- 4. During the Age of enlightenment, French political philosopher Montesquieu declared that individual liberty is threatened , if legislative, executive, and judicial or any two of them are controlled by the same hands.

The Separation of Powers in the U.S. Government

- The framers of the U.S. Constitution built a system of “separation of powers” through “checks and balances” into the document to ensure that no single person or branch of the new government could ever become ‘too powerful.’
- Men like James Madison, the fourth American President, said, “The truth is that all men having power ought to be mistrusted.”
- He believed that in creating any government administered by humans over humans, “You must first enable the government to control the governed; and in the next place, oblige it to control itself.”

The Separation of Powers in the U.S. Government

- As Madison wrote in the **Federalist Papers No 51**, published in 1788, “The accumulation of all powers, legislative, executive and judicial in the same hands, whether of one, a few, or many, and whether hereditary, self–appointed, or elective, may justly be pronounced the very definition of tyranny.”

The Separation of Powers in the U.S. Government

- In both theory and practice, the power of each branch of American government is held in check by the powers of the other two in several ways; e.g., while the President of the U.S. (executive branch) can veto laws passed by Congress (legislative branch), Congress can override presidential vetoes with a two-thirds vote of both houses.
- Similarly, the Supreme Court (judicial branch) can abolish laws passed by Congress by ruling them to be unconstitutional.
- However, the Supreme Court's power is balanced by the fact that its presiding judges must be appointed by the president with the approval of the Senate.

The Separation of Powers in the U.S. Government

- Specific examples of separation of powers through checks and balances include:
- *Executive Branch Checks on the Legislative Branch*
- President has the power to veto laws passed by Congress
- Can propose new laws to Congress
- Submits the Federal Budget to the House of Representatives
- Appoints federal officials, who carry out and enforce laws
- *Executive Branch Checks on the Judicial Branch*
- Nominates judges to the Supreme Court
- Nominates judges to the federal court system
- President has the power to pardon or grant amnesty to persons convicted of crimes

The Separation of Powers in the U.S. Government

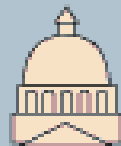
- *Legislative Branch Checks on the Executive Branch*
- Congress can override presidential vetoes with a 2/3 vote of both chambers
- Senate can reject proposed treaties with a 2/3 vote
- Senate can reject presidential nominations of federal officials or judges
- Congress can impeach and remove the president (House serves as prosecution, Senate serves as jury)
- *Legislative Branch Checks on the Judicial Branch*
- Congress can create lower courts. Congress can amend the Constitution to overturn decisions of the Supreme Court
- Senate can reject nominees to the federal courts and Supreme Court
- Congress can impeach judges of the lower federal courts

The Separation of Powers in the U.S. Government

- *Judicial Checks on the Legislative Branch*
- Supreme Court can use the power of judicial review to rule laws passed in the Congress unconstitutional
- *Judicial Checks on the Executive Branch*
- Supreme Court can use the power of judicial review to rule presidential actions unconstitutional (e.g., Judicial check on Trump's executive order against the citizen of six predominantly Muslim country from entering into the U.S.)
- Supreme Court can use the power of judicial review to rule treaties unconstitutional

Are the Branches Truly Equal?

- Some argue that there are more checks on the power of the legislative branch than over the other two branches. For example, both the executive and judicial branches can override or nullify the laws it passes. While they are basically correct, it is how the Founding Fathers intended.
- The system of separation of powers through checks and balances reflects the Founders' interpretation of a republican form of government in which the legislative or lawmaking branch, as the most powerful branch, must also be the most restrained.



LEGISLATIVE BRANCH

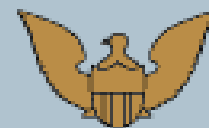
The Congress

House of Representatives;
Senate.

House and Senate can
veto each other's bills.

Congress approves presidential
nominations and controls the budget.
It can pass laws over the president's
veto and can impeach
the president and remove
him or her from office.

The president can veto
congressional
legislation.



EXECUTIVE BRANCH

The President

Executive office of the president;
executive and cabinet depart-
ments; independent
government
agencies.

The Court can declare
laws unconstitutional.

The Senate confirms the president's
nominations. Congress can impeach
judges and remove them from office.

The president
nominates judges.

The Court can declare
presidential
acts unconstitutional.



JUDICIAL BRANCH

The Courts

Supreme Court;
Courts of Appeal;
District courts.