

# CONTROLLING CONSTITUTIONAL PRINCIPLES OF LAW

## *Supreme Court of the United States – The “Authority of Law”*

### *Separation of Powers Doctrine – a system of checks and balances*



**Separation of powers** is a political doctrine originating in the writings of Montesquieu in *The Spirit of the Laws* where he urged for a constitutional government with three separate branches of government. Each of the three branches would have defined abilities to check the powers of the other branches. This idea was called separation of powers. This philosophy heavily influenced the writing of the United States Constitution, according to which the Legislative, Executive, and Judicial branches of the United States government are kept distinct in order to prevent abuse of power. This United States form of separation of powers is associated with a system of **checks and balances**.

### **A System of Checks and Balances**

To prevent one branch from becoming supreme, protect the "opulent minority" from the majority, and to induce the branches to cooperate, government systems that employ a separation of powers need a way to balance each of the branches. Typically this was accomplished through a system of "**checks and balances**", the origin of which, like separation of powers itself, is specifically credited to Montesquieu. Checks and balances allow for a system-based regulation that allows one branch to limit another, such as the power of the United States Congress to alter the composition and jurisdiction of the federal courts. The following example of the separation of powers and their mutual checks and balances for the experience of the United States Constitution is presented as illustrative of the general principles applied in similar forms of government as well.

### Legislative (Congress)

- Passes bills; has broad taxing and spending power; regulates inter-state commerce; controls the federal budget; has power to borrow money on the credit of the United States (may be vetoed by President, but vetoed may be overridden with a two-thirds vote of both houses)
- Has sole power to declare war, as well as to raise, support, and regulate the military.
- Oversees, investigates, and makes the rules for the government and its officers.
- Defines by law the jurisdiction of the federal judiciary in cases not specified by the Constitution
- Ratification of treaties signed by the President and gives advice and consent to presidential appointments to the federal judiciary, federal executive departments, and other posts (Senate only)
- Has sole power of impeachment (House of Representatives) and trial of impeachments (Senate); can remove federal executive and judicial officers from office for high crimes and misdemeanors

### Executive (President)

- Is the commander-in-chief of the armed forces
- Executes the instructions of Congress.
- May veto bills passed by Congress (but the veto may be overridden by a two-thirds majority of both houses)
- Executes the spending authorized by Congress.
- Declares states of emergency and publishes regulations and executive orders.
- Makes executive agreements (does not require ratification) and signs treaties (ratification requiring approval by two-thirds of the Senate)
- Makes appointments to the federal judiciary, federal executive departments, and other posts with the advice and consent of the Senate. Has power to make temporary appointment during the recess of the Senate
- Has the power to grant "reprieves and pardons for offenses against the United States, except in cases of impeachment."

### Judicial (Supreme Court)

- Determines which laws Congress intended to apply to any given case
- Exercises judicial review, reviewing the constitutionality of laws
- Determines how Congress meant the law to apply to disputes
- Determines how a law acts to determine the disposition of prisoners
- Determines how a law acts to compel testimony and the production of evidence
- Determines how laws should be interpreted to assure uniform policies in a top-down fashion via the appeals process, but gives discretion in individual cases to low-level judges. The amount of discretion depends upon the standard of review, determined by the type of case



*The above mention list... in no way represents a complete list of Checks and Balances*