

## TENETS OF THE SEPARATION OF POWERS OR CHECKS AND BALANCES

SEPARATION OF POWERS is a doctrine of Constitutional law under which the three branches of U.S. government (executive, legislative, and judicial) and their duties, are kept legally separate.

This is also known as the system of checks and balances, because each branch is given certain powers so as to inspect and block other branches who may overstep their duties.

The separation of powers doctrine divides government responsibilities into the three branches in order to prevent any one branch from taking over another's duties. The goal of the framers in their creation of separation of powers was to prevent a concentration of power by one branch and thus, unequal control over the government. Checks and balances also help to reduce mistakes and prevent improper behavior in government and helps to ensure that citizens' rights are protected.

Each branch has separate powers, and generally each branch is not allowed to exercise the powers of the other branches.

- The Legislative Branch, or Congress, exercises the congressional power to create laws or statutes.
- The Executive Branch, led by the President, exercises executive power to enforce the laws of the legislature.
- Finally, the Judicial Branch, headed by the Supreme Court, exercises judicial review over the other two branches' actions.

(More information is set out in the pages of the Constitution included in this topic.)

### EXAMPLES OF CHECKS AND BALANCES:

**Judicial Review:** The best-known power of the Supreme Court is judicial review, or the ability of the Court to declare a Legislative or Executive act in violation of the Constitution. The Court established this doctrine in the case of Marbury v. Madison (1803). Judicial review plays an essential role in ensuring that each branch of government recognizes the limits of its own power.

**Presidential Veto:** The president can use a veto to block acts passed by Congress.

**Congressional Override:** Congress can override a veto with enough votes.

**Impeachment:** Congress can impeach members of the executive and judicial branches – The House impeaches and the Senate tries the impeached officer.

**Amendments to the Constitution:** Congress is given the ability to create amendments to the Constitution.

**Ratification of Treaties:** The Senate must ratify treaties.

**Confirmation of Executive Branch officials and Judges, including Supreme Court Justices:** The President nominates them but the Senate confirms them.

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The Military: Congress appropriates the funds for the military but the President is the Commander in Chief.

The Size of the Supreme Court: Congress sets the size of the Supreme Court, which has changed over time.

Executive Orders: Are made by the President, carry the force of law but can be declared unconstitutional by the Judicial branch.

Sources:

[Cornell Law School Legal Information Institute.](#)

[Constitution, Congress, Government Intro 7.2 Separation of Powers Under the Constitution](#)

[United States Courts](#)

[Marbury v. Madison \(1803\)](#)

[Checks and Balances](#)