

1.6 Principle of American Government



ESSENTIALS

1. The powers allocated to Congress, the president, and the courts demonstrate the separation of powers and checks and balances features of the U.S. Constitution.
2. Federalist #51 explains how constitutional provisions of separation of powers and checks and balances control abuses by majorities.
3. Multiple access points for stakeholders and institutions to influence public policy flows from the separation of powers.
4. Impeachment, removal and other legal actions taken against public officials reflect the purposes of checks and balances.

1. What is the underlying idea of this cartoon?
2. Does the principle of the separation of powers infer co-equal branches? Should we be concerned if/when one branch becomes more powerful? What determines the authority of each branch?

James Madison wrote the definitive apology for the separation of powers in the essay Federalist 51 (1788). Read the excerpt below:

“...The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions...”

“...In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself...”

What does this excerpt mean in real terms, “...the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments...”?

Borrowing from Madison, rewrite a contemporary rationale for the separation of powers.

The events of 9/11 served as a watershed moment in a number of ways. Certainly, the debate over the role of government and its relationship to global security changed. So too did the debate over balancing security with individual liberties.

Investigate the following laws passed by Congress in the wake of 9/11. Assess their effectiveness. Assess their constitutional legitimacy:

USA Patriot Act (2001)

Intelligence Reform and Terrorism Prevention Act (2004)

Foreign Intelligence Surveillance Act Amendments (2008)

Concept Application

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other -- that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State.

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative on the legislature appears, at first view, to be the natural defense with which the executive magistrate should be armed.

Excerpt from Federalist #51, February 6, 1788

- A. Describe why a system of checks and balances is necessary, according to this scenario.
- B. Describe how the U.S. Constitution formally addressed your response in (A).
- C. Explain how a branch of government can operate and function today seemingly without being checked.