

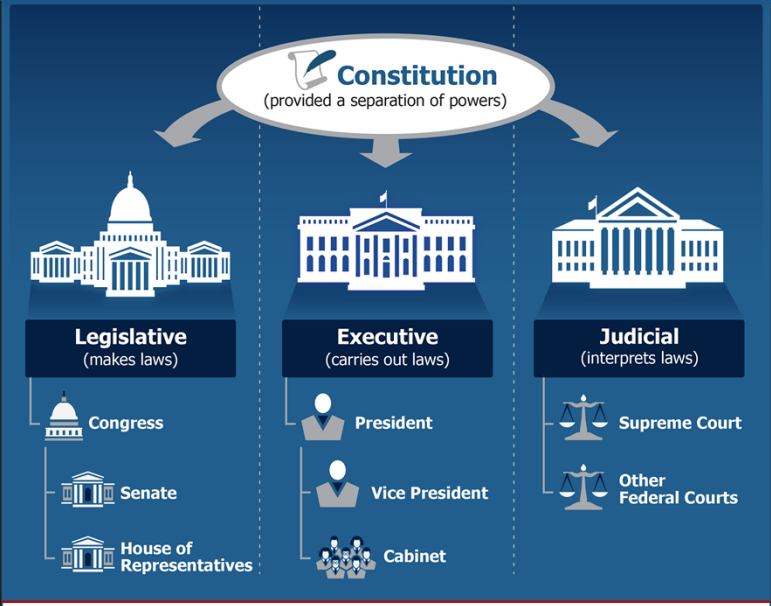
The Fourteenth Amendment: Transforming American Democracy

Separation of Powers



Click to start video. The teacher has been asked to check the volume level prior to the class.

★ ★ **3 BRANCHES of U.S. GOVERNMENT** ★ ★



Overview

- Federal Government
 - Executive – President, Cabinet
 - Legislative – House, Senate
 - Judicial – Federal court system
- State level
 - Executive - Governor
 - Legislative – State Legislature
 - Judicial – State courts
- Checks and balances to prevent abuse of power

The founding fathers of the United States decided that they wanted a strong and fair national government that protected individual freedoms and did not abuse its power.

Likewise, the drafters of the Constitution of the State of Nebraska also thought that separating the government into three separate branches was important.

One of the reasons that there is the separation of powers is to provide a system of checks and balances so that one branch of government wouldn't be able to abuse its power.

Legislative Branch

- Federal: Bicameral, Congress
 - Senate
 - House
- Nebraska: Unicameral
- Congress's powers
 - Introduce new laws;
 - Override a presidential veto;
 - Coin money;
 - Borrow money on behalf of the United States;
 - Appropriate money to the executive branch;
 - Declare war; and
 - Impeach or remove the president



The legislative branch, or the Congress, is a bicameral legislature, meaning that it has two distinct parts: the Senate and the House of Representatives. The Senate has 100 members, with two from each state. The House of Representatives has 435 members, with at least two from each state. Each state's number of representatives varies directly with its population; more populated states, like New York and California, therefore have more representatives, in Nebraska there are three representatives. Voters elect their senators every six years and their representatives every two years.

The Nebraska state legislature is a unicameral legislature, meaning that it only has one part. In Nebraska, there are 49 state senators who are elected to four-year terms. Nebraska state senators have term limits

Legislative Branch

- The legislative branch can check the powers of the executive branch by:
 - Overriding a veto
 - Impeachment
 - Approving Presidential appointments to the Supreme Court, the Cabinet, and federal agencies (like the F.B.I.).
- The legislative branch can check the powers of the Supreme Court by:
 - Confirming judiciary appointments to the Court;
 - Impeaching or removing justices; and
 - Proposing new amendments to the Constitution.

The legislative branch can check the powers of the executive branch by:

Overriding the president or governor's veto on a bill;
Impeaching or removing the president or government; and
Approving presidential appointments to the Supreme Court, the Cabinet, and federal agencies (like the F.B.I.).

The legislative branch can check the powers of the Supreme Court by:

Confirming judiciary appointments to the Court;
Impeaching or removing justices; and
Proposing new amendments to the Constitution.

Executive Branch

- President, Governor, or Mayor
- Members of the Cabinet
- Elected
- Powers
 - Propose laws to the Congress (the legislative branch);
 - Sign bills into law;
 - Veto bills from becoming laws;
 - Negotiate treaties with foreign countries;
 - Make executive appointments
 - Grant pardons to federal offenders.



The executive branch includes the president, members of the Cabinet, and heads of additional federal agencies. Voters elect a president every four years. In turn, the president appoints individuals as ambassadors, members of the Cabinet, and heads of several additional federal agencies, including the C.I.A. and Environmental Protection Agency. Members of the Cabinet oversee 15 executive departments, including the Departments of Homeland Security, Education, Health and Human Services, etc.

Executive Branch

- The President or Governor can check the powers of the Congress by:
 - Proposing new legislation; and
 - Vetoing bills from becoming laws.
- The President or Governor can check the powers of the Supreme Court by:
 - Appointing judges who share your political viewpoints; and
 - Enforcing the Court's decisions.

Judicial Branch

- U.S. Supreme Court
 - Justices
 - Appointment
 - End of Term
- Federal Judges
- Nebraska Supreme Court
 - Court of Appeals
 - District Court
 - County Court



The judicial branch consists of the U.S. Supreme Court and lower federal courts. Nine justices, including a chief justice, comprise the Supreme Court and are appointed by the president and confirmed by the Senate. Justices remain in office until they choose to resign, pass away or are impeached or convicted by Congress. Federal judges who serve in the country's many district courts or one of the country's 13 courts of appeals are also appointed, not elected, and serve indefinitely.

In Nebraska there are Seven Supreme Court justices, six judges on the Nebraska Court of Appeals, District Court and County Court judges as well as judges in the separate juvenile courts and the worker's compensation court.

Judicial Branch

- Members of the judicial branch, have the power to:
 - Declare laws unconstitutional; and
 - Interpret/Make meaning of laws.
- The Judicial Branch can check the powers of the Executive Branch by:
 - Declaring executive acts unconstitutional.
- The Judicial Branch can check the powers of the Congress by:
 - Declaring laws unconstitutional.

Who's got the power?

Power	Branch
Introduces laws	Legislative
Declares laws unconstitutional	Judicial
Signs bills into law	Executive
Coins money	Legislative
Nominates Supreme Court justices	Executive
Declares war	Legislative

SCENARIO #1 (Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579)

On December 18, 1951, collective bargaining between steel companies and their employees broke down and led to a strike scheduled to begin on December 31, 1951. Mediation was attempted by the Federal Mediation and Conciliation Service, but was ultimately unsuccessful and a new strike date was set for April 9, 1952.

As the US was currently involved in the Korean War, President Truman believed that a strike of any length would interfere with defense contractors and the domestic economy. Unable to mediate the issues between the union and the industry, President Truman signed an executive order on April 8, 1952, authorizing the Secretary of Commerce to take possession of and operate the privately-owned steel mills. He informed Congress of his plan and was willing to defer to the will of the legislative branch, but Congress took no action.

The steel companies brought suit in US District Court. The Court issued an injunction barring the government from continuing to hold the steel plants it had seized. The US Court of Appeals stayed this decision and the case went to the US Supreme Court.

Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579



- 1951
- Korean War
- Which branches of government are at play here?
- What authority is being asserted?
- Which branch is exercising authority and which is checking?

Which branches of government are at play here? *[executive and judicial]*

What authority is being asserted? *[Military authority as Commander in Chief of the Armed Forces.]*

Which branch is exercising authority and which is checking? *[The executive branch is trying to exert some authority and the judicial checked it. The legislative branch, which did have the power to do something, did nothing.]*

In a 6-3 decision, the Supreme Court held that the President did not have the constitutional authority to issue this executive order. The Court could not identify any statute created by Congress that authorized the President to take possession and control over private property. The Court also held that any presidential power existing as the Commander in Chief of the Armed Forces did not extend to labor disputes.

For the presenters' reference:

Excerpts from Youngstown Sheet & Tube Co. Et Al. v. Sawyer

343 U.S. 579

Decided June 2, 1952.

Mr. Justice Black delivered the opinion of the Court.

... The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself. There is no statute that expressly authorizes the President to take possession of property as he did here. Nor is there any act of Congress to which our attention has been directed from which such a power can fairly be implied. Indeed, we do not understand the Government to rely on statutory authorization for this seizure. . . .

Moreover, the use of the seizure technique to solve labor disputes in order to prevent work stoppages was not only unauthorized by any congressional enactment; prior to this controversy, Congress had refused to adopt that method of settling labor disputes....

It is clear that if the President had authority to issue the order he did, it must be found in some provision of the Constitution. And it is not claimed that express constitutional language grants this power to the President.

The order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war . . . we cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities. . . .

In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. . . .

The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times.

SCENARIO #2 (US v. Nixon, 418 U.S. 683)

Toward the end of the 1972 presidential election, a group of burglars broke into the Democratic Party campaign headquarters at the Watergate Hotel in Washington D.C. Reporters uncovered that high-ranking government officials, possibly including then-president Richard Nixon himself, were involved in the burglary. Nixon was seeking a second term. Under congressional and public pressure, Nixon appointed a special prosecutor. The special prosecutor's investigation revealed that Nixon had secretly recorded conversations in the Oval Office regarding the burglary.

In 1974, after seven of the president's associates were indicted, a federal subpoena was issued requiring Nixon to turn over the tapes. Nixon's counsel attempted to quash the subpoena citing "executive privilege" and arguing that presidents sometimes needed certain things to remain private and confidential. The District Court denied the request and the matter quickly proceeded to the Supreme Court.

US v. Nixon, 418 U.S. 683



- 1972
- Watergate Hotel
- Which branches of government are at play here?
- What authority is being asserted?
- Which branch is exercising authority and which is checking?

Which branches of government are at play here? *[executive and judicial]*

What authority is being asserted? *[Executive. Presidents trying to assert executive privilege argue that it is implied under the separation of powers doctrine, i.e., but there is no express confidentiality granted to presidents in the constitution.]*

Which branch is exercising authority and which is checking? *[Executive asserting and judicial checking.]*

What did the US Supreme Court do?

The Supreme Court addressed two specific issues in this case. First, the power of the judiciary to be the ultimate arbiter of the constitution, and second, could the president withhold materials relevant to a criminal investigation in the name of executive privilege. Relying on previous holdings dating back to 1803, the Supreme Court reaffirmed that it has the final voice in resolving constitutional questions. Following that determination the Court held that the constitution was silent on the issue and, therefore, no person, not even the president, could be above the law. Nixon turned over the tapes and announced his resignation three days later.

US v. Nixon, 418 U.S. 683

- What problems can you foresee arising out of this situation if our system of checks and balances did not exist? Can you give an example?
- Ethics in Government Act of 1978 created the "independent counsel."
- Do you think the creation of the independent counsel was an unconstitutional breach of executive power? Why/why not?
- Can anyone name a current or former independent or special counsel and who or what they were investigating?



This case led to the passage of The Ethics in Government Act of 1978. The Act established rules for government officials to follow to reduce corruption and the improper use of knowledge gained while employed by the government. The Act created the "independent counsel." The independent counsel had the power to investigate the president and his aides if suspected of wrongdoing. The independent counsel was appointed by a three-judge panel, given an independent budget, and was not removable by the president. The attorney general could remove an independent counsel, but only for cause.

Do you think the creation of the independent counsel was an unconstitutional breach of executive power? Why/why not?

The Ethics in Government Act expired in 1999. Similar provisions were approved by Congress with the creation of the Office of the Special Counsel. Special counsel can be appointed by the president or attorney general and operates under the Justice Department.

Can anyone name a current or former independent or special counsel and who or what they were investigating?

These are likely the two that may be known to the class - Robert Muller – President Trump – Russian Collusion in 2016 election; Ken Starr – President Clinton – Whitewater Real Estate & Monica Lewinsky affair

Local Example: Governor involvement with the Nebraska legislature

- Having the Lt. Governor preside over the legislature.
- Having a lobbyist in contact with senators to advance his agenda.
- Openly donating money to candidates that are challenging senators up for re-election when those senators have disagreed with his agenda.

- Is this problematic or reasonable?
- Should the governor have any contact with the legislative body in an attempt to influence the process or wait until a bill comes to his desk?
- Should that be the way a governor can exercise his or her power regarding new laws and check the power of the legislative branch?

It has been reported that friction exists between the unicameral and Nebraska's current governor Pete Ricketts. Some state senators have complained that the governor has overreached into the legislative process. Some cited examples:

Having the Lt. Governor preside over the legislature. This is permitted by constitutional amendment last reaffirmed by the voters in 2004. The Lt. Governor is a member of the executive branch, but is able to make rulings and break a tie if needed.

Having a lobbyist in contact with senators to advance his agenda.

Openly donating money to candidates that are challenging senators up for re-election when those senators have disagreed with his agenda.

The governor's office and various other senators don't see any of these things as overreach, they believe the governor's interest in the legislative process is a matter of collaboration and the very principle of checks and balances prevents him from intruding in the process, especially since once a bill comes to the floor it is subjected to three rounds of debate and three votes.

What do you think? Is this problematic or reasonable? Should the governor have any contact with the legislative body in an attempt to influence the process or wait until a bill comes to his desk? Should that be the way a governor can exercise his or her power regarding new laws and check the power of the legislative branch?

Further Discussion

- What accounts for the tension that can occur between the branches of government?
- How can this tension be good and bad?
- How does politics muddy the principle of separation of powers? Or does it have a role at all?

Feel free to allow the students to direct the discussion at this point, return to topics that were brought up earlier, or use the following questions to continue spurring conversation.