

IDENTIFY AND EXPLAIN HOW THE CONSTITUTION ATTEMPTS TO CREATE A SEPARATION OF POWERS IN THE UNITED STATES' POLITICAL SYSTEM

In the 18th Century, the French philosopher Montesquieu, who had been one of the inspirations behind the French Revolution, argued that limitation would be necessary within government within government in order to avoid tyranny. He identified the Executive, the Legislature and the Judiciary as the four branches of government which needed to be separated. To do this, he suggested the 'Separation of Powers', a mechanism built internally into government where each branch would have powers enabling it to limit those of another so no one branch becomes too powerful.

The Founding Fathers of the American Constitution agreed with Montesquieu's ideas and introduced a system of checks and balances into the Constitution to support the Separation of Powers.

There are several ways in which Separation of Powers is achieved by the Constitution. If we take the Executive and Legislature first, the Executive in the US government is the Presidential Office and the Legislature is the two Houses of Congress – the House of Representatives being the Lower House and the Senate being the Upper House. The Senate has the power to confirm all major presidential appointments. The combined Houses of Congress controls the Executive budget and appropriation (expenditure), passes/rejects all legislation requested by the President and can impeach and remove the President for 'high crimes and misdemeanours'. In addition, the Senate ratifies foreign treaties signed by the President with a two-thirds majority. On the other side, the Executive also has powers to limit the Legislature and so complete the Separation of Powers. The President can, for instance, propose Legislation. He or she can call special sessions of Congress and can even veto bills passed by Congress. A two-thirds majority in both Houses of Congress in turn can again override this veto.

Now to take the Legislature and Judiciary, the Judiciary in the US government is the US Supreme Court. The Senate, for example, must approve all judicial appointments. Congress has the powers to create new lower courts, change the number of judges and impeach/remove judges for misbehaviour. On the other side this time, the Supreme Court can rule an act of Congress as unconstitutional and interprets the laws passed by Congress.

Last, we can also observe how the US Constitution creates Separation of Powers between the Executive and Judiciary. While the President appoints all federal judges, the Supreme Court can rule Presidential actions unconstitutional, can rule against the Executive in cases and can issue or refuse warrants to allow police search.

An example of the Separation of Powers and checks and balances can be seen during President Franklin D. Roosevelt's time in office. In 1937, he sought to enlarge the Court beyond the existing 9 members to 15. His 'court packing' plan would have enabled him to gain a majority which would have been sympathetic to his famous "New Deal". However, the proposal met firm resistance in Congress seeing it as an attack on the Separation of Powers.

However, there are some arguments to claim that the US Constitution is not centred around a Separation of Powers as much as we are led to believe.

Richard Neustadt claimed there was no Separation of Powers but merely "separate institutions sharing power".

In June 1983, following the “Immigration and Naturalisation Service vs. Chadha” case, the Supreme Court declared that the legislative veto was unconstitutional because it gave Congress a power that was not subject to presidential concurrence and therefore breached the Separation of Powers. Some since have argued that the ‘checks and balances’ should be reviewed because they may not provide satisfactory Separation of Powers.

The system of checks and balances have also been under heat for not providing satisfactory Separation of Powers because some have observed how since the 19th Century right up to the modern day, the presidential authority seems to dominate in government. They observe how President Thomas Jefferson in 1803 authorised the ‘Louisiana Purchase’ without the consult of Congress. This more than doubled the size of the US and used up funds in the US budget therefore Congress is shown as weak for not forcing itself to take part in this crucial decision. Another example can be seen where President Abraham Lincoln ordered the blockade of southern ports and increased the number enlisted in the army again without Congressional authorisation during the Civil War. By the 1960’s too, during the Vietnam War, the Presidents had undoubted primacy/hegemony in the handling of defense policy