Separation of Powers -- An Overview

The term "trias politica" or "separation of powers" was coined by Charles-Louis de Secondat, baron de La Brède et de Montesquieu, an 18th century French social and political philosopher. His publication, *Spirit of the Laws*, is considered one of the great works in the history of political theory and jurisprudence, and it inspired the Declaration of the Rights of Man and the Constitution of the United States. Under his model, the political authority of the state is divided into legislative, executive and judicial powers. He asserted that, to most effectively promote liberty, these three powers must be separate and acting independently.

Separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances.

The traditional characterizations of the powers of the branches of American government are:

* The legislative branch is responsible for enacting the laws of the state and appropriating the money necessary to operate the government.
* The executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch.
* The judicial branch is responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it.

Forty state constitutions specify that government be divided into three branches: legislative, executive and judicial. California illustrates this approach; "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

While separation of powers is key to the workings of American government, no democratic system exists with an absolute separation of powers or an absolute lack of separation of powers. Governmental powers and responsibilities intentionally overlap; they are too complex and interrelated to be neatly compartmentalized. As a result, there is an inherent measure of competition and conflict among the branches of government. Throughout American history, there also has been an ebb and flow of preeminence among the governmental branches. Such experiences suggest that where power resides is part of an evolutionary process.

1. How does the separation of powers promote liberty?

2. Why is there an inherent measure of conflict and competition among the branches of government?

3. How are checks and balances similar to separation of powers? How are they different?

4. How is the executive branch checked by the legislative branch?

5. How is the legislative branch checked by the judicial branch?

6. How is the judicial branch checked by the executive branch?
Checks and Balances

The American constitutional system includes a notion known as the **Separation of Powers**. In this system, several branches of government are created and power is shared between them. At the same time, the powers of one branch can be challenged by another branch. This is what the system of checks and balances is all about.

There are three branches in the United States government as established by the Constitution. First, the Legislative branch makes the law. Second, the Executive branch executes the law. Last, the Judicial branch interprets the law. Each branch has an effect on the other.

**Legislative Branch**

- **Checks on the Executive**
  - Impeachment power (House)
  - Trial of impeachments (Senate)
  - Selection of the President (House) and Vice President (Senate) in the case of no majority of electoral votes
  - May override Presidential vetoes
  - Senate approves departmental appointments
  - Senate approves treaties and ambassadors
  - Approval of replacement Vice President
  - Power to declare war
  - Power to enact taxes and allocate funds
  - President must, from time-to-time, deliver a State of the Union address

- **Checks on the Judiciary**
  - Senate approves federal judges
  - Impeachment power (House)
  - Trial of impeachments (Senate)
  - Power to initiate constitutional amendments
  - Power to set courts inferior to the Supreme Court
  - Power to set jurisdiction of courts
  - Power to alter the size of the Supreme Court

- **Checks on the Legislature - because it is bicameral, the Legislative branch has a degree of self-checking.**
  - Bills must be passed by both houses of Congress
  - House must originate revenue bills
  - Neither house may adjourn for more than three days without the consent of the other house

**Executive Branch**

- **Checks on the Legislature**
  - Veto power
  - Vice President is President of the Senate
  - Commander in chief of the military
  - Recess appointments
  - Emergency calling into session of one or both houses of Congress
  - May force adjournment when both houses cannot agree on adjournment
  - Compensation cannot be diminished

- **Checks on the Judiciary**
  - Power to appoint judges
  - Pardon power

- **Checks on the Executive**
  - Vice President and Cabinet can vote that the President is unable to discharge his duties

**Judicial Branch**

- **Checks on the Legislature**
  - Judicial review
  - Seats are held on good behavior
  - Compensation cannot be diminished

- **Checks on the Executive**
  - Judicial review
  - Chief Justice sits as President of the Senate during presidential impeachment