



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
Joel W. Solomon United States Courthouse
900 Georgia Avenue
Chattanooga, Tennessee 37402

THE FEDERAL JUDICIARY: A SEPARATE AND COEQUAL BRANCH OF GOVERNMENT

To better secure the people's liberty, the Constitution divides the power of the federal government among three separate and coequal branches. The judiciary is one of these separate and coequal branches. What does this mean in practical terms?

In its most basic sense, it means the judiciary is on the same level of authority as the legislative and executive branches. It is neither superior to Congress and the presidency nor subordinate to them. It would not be proper for the judiciary to take it on itself to try to run the legislative or executive branch. By the same token, it would not be proper for Congress or the president to try to run the judiciary. As head of the judiciary, the Supreme Court is deserving of the same respect and deference as Congress and the president in their respective spheres.

Being a separate and coequal branch of government means that the judiciary is not a department, agency, or bureau of government. It is not like the Department of the Treasury, the Postal Service, the Internal Revenue Service, or the Department of Health and Human Services, each of which is a subordinate agency of the executive branch. These agencies are under the authority of the president and are subject to some congressional oversight. But the judiciary, like Congress and the presidency, is a separate branch of government.

CORE FUNCTIONS AND RESPONSIBILITIES.

The Constitution assigns each of the three branches certain "core" functions and responsibilities. Core functions are unique to each branch, and the other branches cannot assume or invade these responsibilities. For the judiciary, Article III, Section I of the Constitution provides: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." The judicial power is thus exclusive to the judiciary and is the judiciary's core function. Neither Congress nor the president can lawfully assume the judicial power, invade the judiciary's implementation of the judicial power, or control the judiciary in carrying out the judicial power.

For example, the power to conduct a trial to resolve a dispute between two or more parties rests exclusively with the judicial branch. Neither Congress nor the president may convene a trial to take evidence and resolve such a dispute. Only the judiciary can do this. Nor can Congress or the president dictate the outcome of such a trial.

This does not mean Congress may not establish and the president may not oversee entities they refer to as courts that administer specific government programs, such as Social Security courts or immigration courts. Administrative courts do not invade the judiciary's province because they are not courts within the meaning of the "judicial power" of the United States. Ultimately, if an individual is not satisfied with the resolution of a matter in an administrative court, he or she has the right to appeal to a court of the United States, where the resolution of the dispute will be final.

THE JUDICIAL POWER OF THE UNITED STATES.

The judicial power clearly encompasses certain powers and responsibilities. Foremost among these is the responsibility to say what the law is and what the Constitution means. It thus includes the responsibility to interpret the laws passed by Congress and to determine whether the other two branches are acting within the bounds of the Constitution. As discussed above, it includes the responsibility to settle disputes between citizens and others under the law. And it includes the responsibility to protect citizens from government power when the government enforces federal criminal laws against them. The judiciary fulfills this responsibility by, for example, empanelling grand juries, presiding over initial appearances and the appointment of counsel where necessary, conducting fair and open jury trials, ensuring that guilty pleas are knowing and voluntary, and imposing appropriate sentences in open court.

For the judiciary to exercise the judicial power requires that the judiciary have sole responsibility for its personnel decisions and policies. While judges themselves are nominated by the president and confirmed by the Senate, judges must then determine whom to hire to enable them to fulfill their responsibilities and how to manage the judiciary's workforce. Just as the judiciary does not have the authority to dictate to the Congress or the president whom they should hire or how to manage their personnel, these two branches do not have the authority to dictate personnel policy and matters to the judiciary.

OVERLAP IN FUNCTIONS AND RESPONSIBILITY.

Although each branch of government has certain "core" functions and responsibilities, there is overlap as we get to the outer edges of each branch's powers. The further away from the core function and responsibility of one branch, the more likely it is that another branch has some authority. For example, although a particular court has the authority to set rules for participants in a single matter before that court, for general rules that pertain to large numbers of people and govern the entire mechanism of practicing in court, such as the Federal Rules of Evidence, Congress has a role to play.

The Constitution also provides for checks and balances through which each branch acts as a check on the power of the others. Some of these are explicitly stated by the Constitution while others are implied. The president acts as a check on the judiciary by nominating justices and judges to the Supreme Court, the Courts of Appeals, and the District Courts. The judiciary acts as a check on Congress when it examines whether a law complies with the Constitution. Congress acts as a check on the courts when it enacts a law that clarifies or corrects an error the courts observed in an earlier law.

Tension between branches is most apt to arise at the outer edges of core functions. In this area there are more likely to be issues where two, or perhaps even all three, branches believe they have authority to act. Where the Constitution does not provide a clear answer, the branches must, formally or informally, fashion a negotiated solution.

SEPARATION OF POWERS – TO BETTER SECURE THE PEOPLE’S LIBERTY.

Our judiciary has functioned for over two hundred years largely as the framers envisioned. By acting as a separate and coequal branch of our national government, the judiciary helps to prevent concentration of power in the other branches. By doing so it serves as a bulwark in protecting the people’s liberty.

Curtis L. Collier
United States District Judge
Chair, Eastern District of Tennessee Civics and Outreach Committee

Carrie Brown Stefaniak
Law Clerk to the Honorable Curtis L. Collier
Past President, Chattanooga Chapter of the Federal Bar Association

Karen L. Sheng
Law Clerk to the Honorable Curtis L. Collier