



## ***The “Separation of Powers” Doctrine: Why Do We Separate the Powers of Government?***

The Wisconsin Constitution, like most state constitutions, divides the state government’s powers into three separate and independent branches. Such a division ensures that no central authority will become too powerful and endanger the liberties of the people. The three branches are the legislative, executive, and judicial. Although they are separate and independent, they must cooperate with each other to run state government.

The three-branch scheme copies the structure of national government, which the original framers of the U.S. Constitution adopted following the American Revolution. They wanted to avoid the concentration of power that was held by the English monarchy at that time, which they believed led to tyranny. So they provided for three branches that assume the three basic functions of government. The framers of the constitution further divided power by giving exclusive powers to the federal government and to the states. State governments also adopted the three-branch model.

Separation does not necessarily mean that the three branches have equal or balanced power. Governmental power comes from the people, who do not entrust it to a single entity. Separating governmental powers diffuses political authority and makes the operation of government in the U.S. more

cumbersome. The three branches of government are designed to compete against one another in the formulation of public policy and thereby strengthen our democracy. This is in stark contrast to the governmental structure in many other liberal democracies in which members of the majority political party in the legislature or parliament assume cabinet positions in the executive branch.

Like the U.S. Constitution, the Wisconsin Constitution does not explicitly require separation, but it does grant the powers of government to separate branches. The Wisconsin Supreme Court has held that each branch has an “exclusive zone” of core powers, and that the branches share certain other powers. For example, the judicial and the executive branches share the power to revoke the probation of a convicted felon. Wisconsin’s supreme court has taken a fairly permissive attitude toward sharing of power, so the various branches overlap more in Wisconsin than in most other states.

Legislative powers are further divided into a bicameral system, and the governor’s powers are similarly limited by the existence of several constitutional officers in the executive branch.

### **LEGISLATIVE POWERS**

Two houses make up the legislative branch: the senate (with 33 members) and the assembly (with 99 members). Laws must pass both houses in identical form. This branch makes the law, passes the state budget, determines the tax structure of the state, and audits the other branches of government. These legislative actions set the public policy of the state. The legislature possesses plenary power, meaning the constitution does not grant specific powers to the legislature. It has all powers of government not assigned to another branch or prohibited by the federal Constitution.

Only the legislature may judge the qualifications of its members, so the courts cannot determine whether a person qualifies to serve as a legislator. The legislature also has exclusive authority to determine its rules of procedure.

The legislature has powers that serve as checks on the other branches. It can override a governor’s veto; it has the power to impeach civil officers from any branch of government; it establishes the lower courts; and it can originate an amendment to the constitution. Certain governor’s appointments must have the consent of the senate.

## EXECUTIVE POWERS

The executive branch has the power and duty to administer, implement, execute, and enforce the law. The governor serves as the head of the executive branch and as commander in chief of the state military and naval forces. The executive branch includes most state agencies. The Wisconsin Constitution creates administrative officers, such as the attorney general, the treasurer, the superintendent of public instruction, and the secretary of state, who independently exercise some of the executive powers.

The governor also has powers that check the other branches. The legislature must present each bill that it passes to the governor, who can veto acts of the legislature and may call the legislature into special session. Wisconsin's governor has the strongest veto power in the U.S. The governor cannot dissolve a legislature or a legislative session. The governor can fill vacancies in judicial offices and may pardon persons convicted of a crime.

## JUDICIAL POWERS

The third branch of government, the judicial branch, includes the state supreme court, the court of appeals, and all other courts. The seven-member supreme court controls the other courts, makes procedural rules for the courts, and hears final appeals. The courts determine how the law applies to a particular set of facts. Trial courts determine what evidence may be used to reach a decision and make findings of fact. Courts interpret the law and the constitution in actual cases or controversies, and make binding orders.

Courts fashion remedies—both

awards of money damages and injunctive relief—for rights that have been curtailed. Courts have inherent authority to incarcerate any person who disobeys a lawful court order. The judiciary can moderate the powers of the other branches. It can declare that acts of the legislature (statutes) violate the constitution, and it can rule that the executive branch has broken the law.

## SHARED POWERS

In Wisconsin, two or more branches of government share certain powers.

### *Legislative-executive overlap.*

State agencies may issue rules or regulations, but this is not a legislative function if the rules merely describe how statutes will be interpreted by an executive branch agency. The governor has a distinct role in the legislative process. He or she may propose bills and veto legislation. The main bill that the governor proposes is the state budget bill.

The legislature has the power to review proposed administrative rules. This function would be considered a violation of the separation of powers doctrine in many other states. If the legislature objects to an executive branch agency's proposed rule, it considers legislation to support the objection. The proposed rule cannot go into effect while the legislature considers that legislation.

When the legislature passes a bill, the constitution requires it to present the bill to the governor for signature. The governor may veto acts of the legislature, although the legislature can override the veto.

*Legislative-judicial overlap.* The state senate sits as the court for all impeachments of public officers. The state assembly initiates impeachments. The legislature has the power to learn facts upon which legislative choices may depend. It may hold hearings and subpoena witnesses and documents. The legislature can investigate the other two branches, generally acting through its committees. The legislature appoints the state auditor.

Courts usually do not rule on political questions, reserving that task for the legislature. Nor do the courts normally rule on the propriety, practicality, or wisdom of a statute. Courts may only invalidate statutes that violate the constitution.

*Executive-judicial overlap.* Executive branch agencies may conduct hearings that resemble judicial proceedings. Agencies may hold such hearings to determine if certain facts exist, to grant or revoke licenses, to assess penalties, and to perform other executive acts, subject to judicial review, as long as the hearing officer does not exercise judicial powers.

## SUMMARY

The constitution separates the powers of government to avoid concentration of governmental power and to prevent tyranny. The doctrine does not require total separation of powers, but it sacrifices some efficiency in government to ensure that the people will have liberty.

# Governing Wisconsin: "Separation of Powers"

## Study Questions

1	What document creates the three branches of government? What are the three branches?	
2	How does the separation of powers prevent tyranny?	
3	How do the three branches of the state government check each other? Design a chart to illustrate your answer.	
4	Compare the structure of Wisconsin's government to the structure of federal government. Make a list to show the comparison.	
5	If the legislature passed a law requiring 18-year-olds to do community service for one year, and the judicial branch declared the law unconstitutional, how could the legislature make the law a reality?	
6	How does the separation of powers doctrine sacrifice efficiency for protection against tyranny? Is this a good or a bad thing?	

## Governing Wisconsin: Separation of Powers

### Study Questions in the Cognitive Domain

1	What document creates the three branches of government? What are the three branches?	The Wisconsin Constitution creates the three branches of state government in Wisconsin. The branches are the legislative, the executive, and the judicial.	Cognition
2	How does the separation of powers prevent tyranny?	The power of the state is separated into three branches each with separate and competing powers. Each branch can check the others in some way, thereby preventing any one branch or person from seizing too much power.	Comprehension
3	How do the three branches of the state government check each other? Design a chart to illustrate your answer.	Students should make a graphic representation that shows executive checks (veto, pardon criminals, fill judicial vacancies); legislative checks (override vetoes, impeach officers from any branch, originate an amendment); and judicial checks (interpret laws, can rule against the executive branch).	Application
4	Compare the structure of Wisconsin's government to the structure of federal government. Make a list to show the comparison.	Both governments are comprised of three branches. Both provide a separation of powers; one branch checks the powers of the other two branches. The governor and the president have veto power. Both systems have a bicameral legislature. Both supreme courts have the power of judicial review, but the U.S. Supreme Court has final review.	Analysis
5	If the legislature passed a law requiring 18-year-olds to do community service for one year, and the judicial branch declared the law unconstitutional, how could the legislature make the law a reality?	The legislature can begin the process to amend the state constitution.	Synthesis
6	How does the separation of powers doctrine sacrifice efficiency for protection against tyranny? Is this a good or a bad thing?	Neither the governor nor the legislature can both make the law and enforce it. Even then, government action is subject to review by the courts. Because both branches must act, citizens are more secure, which makes the inefficiency of separation of powers a good thing.	Evaluation