

## 2.2: The Branches of Government

### Learning Objectives

1. Identify the three branches of government.
2. Ascertain the head of the federal and state legislative branches of government.
3. Compare the Senate and the House of Representatives.
4. Ascertain the head of the federal and state executive branches of government.
5. Ascertain the head of the federal and state judicial branches of government.

The federal Constitution was written to ensure that government power is distributed and never concentrated in one or more areas. This philosophy is served by **federalism**, where the federal government shares power with the states. It is also further served by dividing the government into three branches, all responsible for different government duties and all *checking and balancing* each other. The three branches of government are detailed in Articles I–III of the federal Constitution and are the **legislative branch**, the **executive branch**, and the **judicial branch**. While the federal Constitution identifies only the federal branches of government, the principle of checks and balances applies to the states as well. Most states identify the three state branches of government in their state constitutions.

Each branch of government has a distinct authority. When one branch encroaches on the duties of another, this is called a violation of **separation of powers**. The *courts* decide whether a government branch has overstepped its boundaries because courts interpret the Constitution, which describes each branch's sphere of influence. Thus the judicial branch, which consists of all the courts, retains the balance of power.

### The Legislative Branch

The **legislative branch** is responsible for creating statutory laws. Citizens of a state can vote for some state statutes by ballot, but the **federal legislative branch** enacts all federal statutes. In the federal government, the legislative branch is headed by Congress. States' legislative branches are headed by a state legislature. Congress is **bicameral**, which means it is made up of two houses. This system provides equal representation among the several states and by citizens of the United States. States are represented by the **Senate**. Every state, no matter how large or small, gets two senators. Citizens are represented by the **House of Representatives**. Membership in the House of Representatives is based on population. A heavily populated state, like California, has more representatives than a sparsely populated state, like Alaska. States' legislatures are generally bicameral and have a similar structure to the federal system.

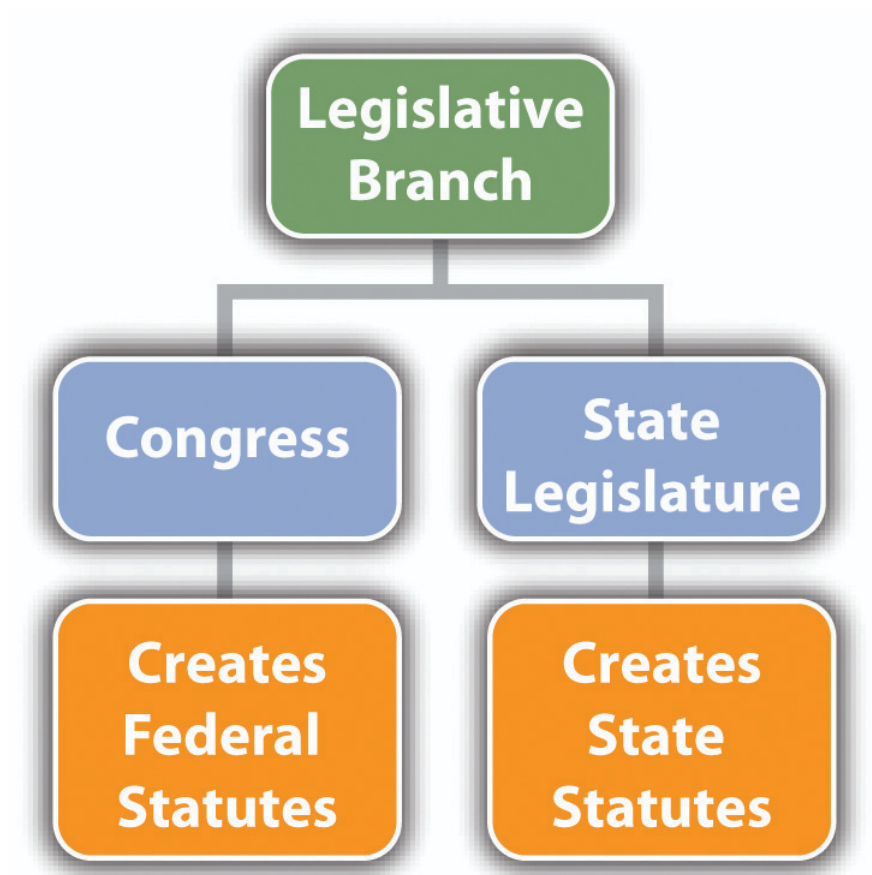


Figure 2.2.1 Diagram of the Legislative Branch

#### ✓ Example 2.2.1

##### Legislative Branch Checks and Balances

The legislative branch can check and balance both the *executive* branch and the *judicial* branch. Congress can impeach the president of the United States, which is the first step toward removal from office. Congress can also enact statutes that supersede judicial opinions, as discussed in [Chapter 1](#). Similarly, state legislatures can also impeach a governor or enact a state statute that supersedes a state case law.

### The Executive Branch

The **executive branch** is responsible for enforcing the statutes enacted by the legislative branch. In the federal government, the executive branch is headed by the president of the United States. States' executive branches are headed by the governor of the state.



Figure 2.2.2 Diagram of the Executive Branch

#### ✓ Example 2.2.2

##### Executive Branch Checks and Balances

The executive branch can check and balance both the *legislative* branch and the *judicial* branch. The president of the United States can veto statutes proposed by Congress. The president also has the authority to nominate federal justices and judges, who thereafter serve for life. State executive branches have similar check and balancing authority; a governor can generally veto statutes proposed by the state legislature and can appoint some state justices and judges.

### The Judicial Branch

The **judicial branch** is responsible for interpreting all laws, including statutes, codes, ordinances, and the federal and state constitutions. This power is all-encompassing and is the basis for **judicial review**, referenced in [Chapter 1](#). It allows the judicial branch to invalidate any unconstitutional law in the statutory source of law and also to change the federal and state constitutions by interpretation. For example, when a court creates an exception to an amendment to the constitution, it has made an informal change without the necessity of a national or state consensus. The federal judicial branch is headed by the U.S. Supreme Court. Each state's judicial branch is headed by the highest-level state appellate court. Members of the judicial branch include all judges and justices of every federal and state court in the court system, which is discussed shortly.

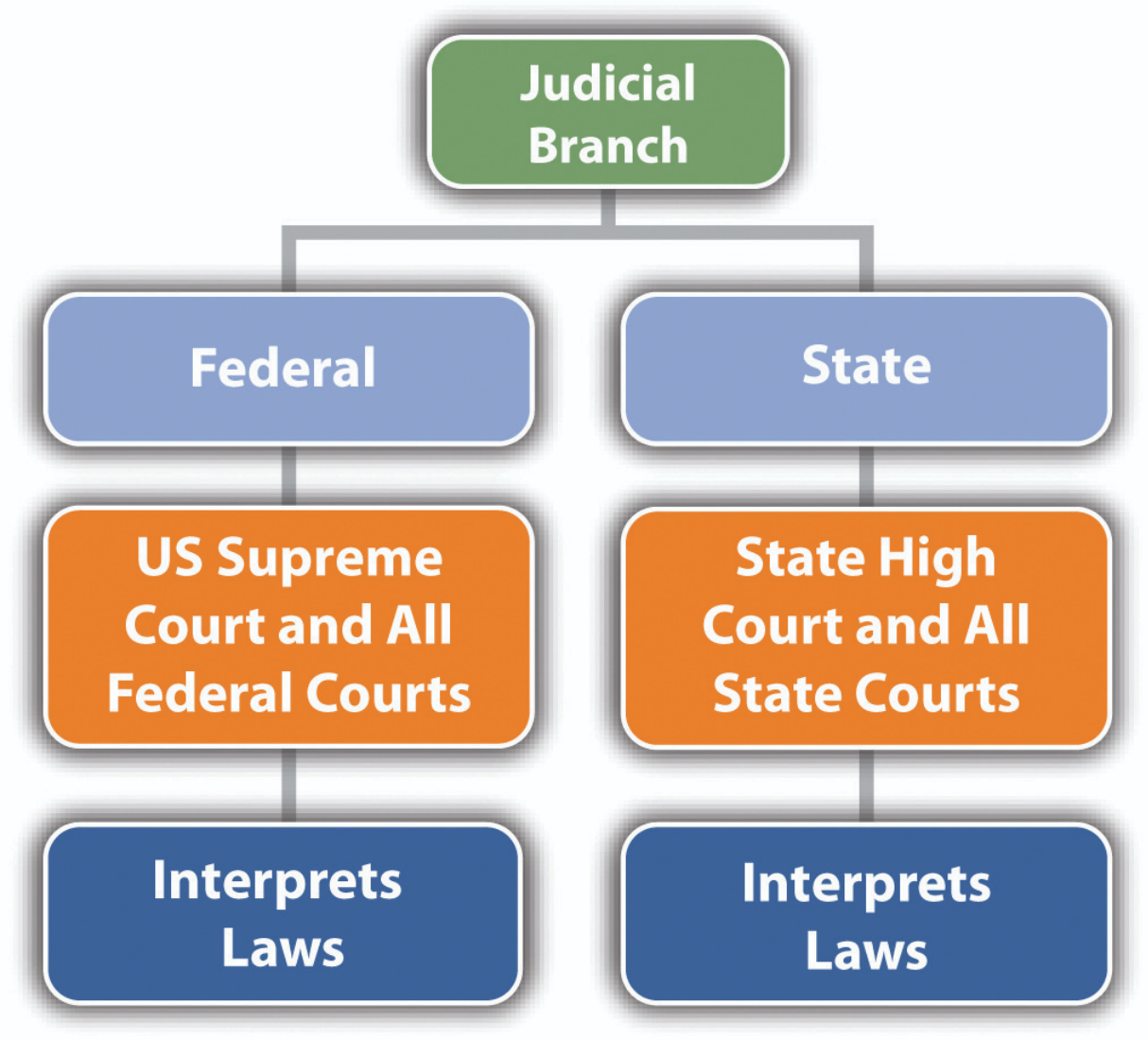


Figure 2.2.3 Diagram of the Judicial Branch

✓ Example 2.2.3

**Examples of Judicial Branch Checks and Balances**

The judicial branch can check and balance both the *legislative* branch and the *executive* branch. The U.S. Supreme Court can invalidate statutes enacted by Congress if they conflict with the Constitution. The U.S. Supreme Court can also prevent the president from taking action if that action violates separation of powers. The state courts can likewise nullify unconstitutional statutes passed by the state legislature and void other executive branch actions that are unconstitutional.

Table 2.2 The Most Prominent Checks and Balances between the Branches

Government Branch	Duty or Authority	Check and Balance	Government Branch Checking and Balancing
Legislative	Create statutes	President can veto	Executive
Executive	Enforce statutes	Congress can override presidential veto by 2/3 majority	Legislative

Government Branch	Duty or Authority	Check and Balance	Government Branch Checking and Balancing
Judicial	Interpret statutes and Constitution	President nominates federal judges and justices	Executive
Executive	Enforce statutes	Senate can confirm or reject presidential nomination of federal judges and justices	Legislative
Executive	Enforce statutes	Congress can impeach the president	Legislative
Legislative	Create statutes	Courts can invalidate unconstitutional statutes	Judicial
Executive	Enforce statutes	Courts can invalidate unconstitutional executive action	Judicial
Judicial	Interpret statutes and Constitution	Statutes can supersede case law	Legislative

## Key Takeaways

- The three branches of government are the legislative branch, the executive branch, and the judicial branch.
- The head of the federal legislative branch of government is Congress. The head of the state legislative branch of government is the state legislature.
- The Senate represents every state equally because each state has two senators. The House of Representatives represents each citizen equally because states are assigned representatives based on their population.
- The head of the federal executive branch of government is the president. The head of each state's executive branch of government is the governor.
- The head of the federal judicial branch of government is the U.S. Supreme Court. The head of each state judicial branch of government is the highest-level state appellate court.

## Exercises

### ? Exercise 2.2.1

A mayor enacts a policy that prohibits police officers in their city from enforcing a state law prohibiting the possession and use of marijuana. The mayor's policy specifically states that marijuana is legal to possess and use within city limits. Which constitutional principle is the mayor violating? Which branch of government should check and balance the mayor's behavior in this matter?

#### Answer

The mayor is violating separation of powers because members of the executive branch cannot invalidate or supersede laws passed by the legislative branch; only the *judicial* branch is entitled to do this via *judicial review*. The judicial branch should check and balance this action, *if* someone attacks the mayor's policy in court.

### ? Exercise 2.2.2

Read the *majority's opinion* (i.e., through p. 592) in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). In *Youngstown*, President Truman seized control of steel mills to avert a strike, using his authority as commander in chief of the armed forces. President Truman wanted to ensure steel production during the Korean War. Did the U.S. Supreme Court uphold President Truman's action? Why or why not?

#### Answer

The U.S. Supreme Court did not uphold President Truman's action and ruled that he was violating *separation of powers*. A statute on point already disallowed the president's action (the Taft-Hartley Act). The president cannot supersede Congress's authority by ignoring a constitutional statute that Congress enacted, even during wartime.

### ? Exercise 2.2.3

Read [Hamdi v. Rumsfeld](#), 542 U.S. 507 (2004), through page 539. In *Hamdi*, the U.S. Supreme Court reviewed the U.S. Court of Appeals for the Fourth Circuit's decision prohibiting the release of a U.S. citizen who was held as an enemy combatant in Virginia during the Afghanistan War. The citizen's detention was based on a federal statute that deprived him of the opportunity to consult with an attorney or have a trial. Did the U.S. Supreme Court defer to the federal statute? Why or why not?

#### Answer

The U.S. Supreme Court reversed the U.S. Court of Appeals for the Fourth Circuit. The Court held that the judicial branch is not required to allow unconstitutional federal statutes to remain in effect during wartime because of *separation of powers*. The Court determined that the detainee's constitutional right to due process allowed him access to an attorney and a court trial, in spite of the federal statute.

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