

# [Federalism and separation of power](https://assignbuster.com/federalism-and-separation-of-power/)

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Democracy as a system of political administration has been termed over years as a product of several institutions working together to ensure the sustainability of an exclusive political system. Democratic institutions in a state are saddled with theresponsibilityof sustaining a nation’s democratic process such institutions like legislature, judiciary and the executive are the major institutions that guarantee efficiency in a democratic system. ( Ologbenla 1996) Basically, the legislative arm is the major institution that guarantees such because it represents the generality of the people’s interest.

The doctrines of separation of power and checks and balances are two major tenets of democracy. Both doctrines provide basic principles that should be upheld in any democratic state. The adherence to these democratic tenets depends largely on the level of political adherence that follows the basic rules and regulations that guides the conduct of both the ruler and the ruled in an exclusive political community. Such rules and regulation are codified in a document known as constitution. A constitution is a legal framework that spells out the composition, function, and jurisdiction of government officials. Almond et al. 1966) It is a body of fundamental rules guiding the affairs of state. It states the relationship between the governors and the governed. Separation of powers is a doctrine propounded by Baron de' Montesquieu which stipulates that in order to avoid arbitrary use of power, power should be decentralised and shared among the organs of government such that no organ becomes too powerful. (Neumann 1949) The principle of checks and balances states that an organ of government should act as a watchdog on the other organs of government so as to curb their excesses.

In a democratic system all governmental powers are derived from the constitution, it also spells out the functions and relationship of major governmental institutions such as the executive, judiciary and the legislature such that no organ of government can interfere in the affairs of the other. The constitution makes each arm of government to be an independent and coordinate unit, independent in terms of its sphere of influence and coordinate in its inter-governmental relationship with other arms of government.

With cognisance to the American democratic structure, the constitution provides for separation of powers by stipulating the functions of the various arms of government and also the jurisdiction of the different tiers of government, whereby the executive cannot meddle in the affairs of the legislature and vice-versa. The primary function of the legislature is the making of laws ;( Easton 1961) it would be a total negation of the principle of separation of power if such function is being exercised by the executive.

Although, the executive can propose a bill after much deliberation by the legislature can be passed into law but the power to make laws lie in within the jurisdiction of the legislature. But in recent times the principle had been challenged due to the overwhelming power andpersonalityof the executive. For example, President George Bush after the Sept 11 attack on the world trade centre proposed a bill to the congress to invade Iraq. Before the house could pass the bill he had sent troops to wage war in Iraq.

This was contrary to the constitutional provisions which states that before United State would engage in a war it must be ratified by the congress in a joint session. Checks and balances on the other is to serve as a balance between the various organs of government in such a way that an arm of government serve as the watchdog over the other arms of government. (Neumann 1949) This function is majorly that of the judiciary this is the done through judicial reviews which help scrutinize both activities of the executive and the legislature.

For this function to be performed to the optimum level there is the need for an independent judiciary that is free from executive manipulation. A bill is a proposed law that is not yet law until it is passed by the law making body in the country and received the executive or presidential assent. (Easton 1961) There are several stages that are involved in the passing of a bill before it becomes law. The first stage of the bill is the first introduction of the bill to the house. The introduction of bill could either be a private member bill or it originates from the lower house depending on the type of legislative chamber in operation.

In a two chamber legislative house, bills originate from the lower house and are deliberated on in a joint session. This stage marks the first reading of the bill to the house. The second reading marks a stage where the bill is fully deliberated upon by lawmakers and it represents a crucial stage in the passing of such bill into law, because this stage determines whether such bill would become law. After the bill had successfully passed through the second reading then a committee would be constituted to critically examine and analyse the bill, give recommendations and possible impact of the bill if passed into law.

This stage represents the committee stage. After constituting the committee, the next stage is the report stage where the committee presents their report to the house on the bill. After the committee stage the bill is presented to the lawmakers for adoption. It should be noted that at this stage the bill can still be rejected if the lawmakers refuse to adopt the bill by voting against it. But if the bill was accepted by the lawmakers then it can now proceed to the third stage which requires the president’s assent.

If the bill passed by the legislature was not assented to by the executive, the legislature can constitutionally veto such bill into law after a period of 14 days. Federalism is a political system in which governmental powers are shared among the different tiers and organs of government such that each tier and organ is coordinate, independent, and exclusive in its own sphere of authority. (Leslie 1954) With reference to the debate on whether state power had been reduced or increased in a federal structure, cognisance would be given to emerging democracies mostly in third world countries where democratic structures are still growing.

In Nigeria, state powers are gradually reduced as the constitution vested much power in the exclusive legislative list which only allows the federal government to legislate. (Ologbenla 1996) Matters such as currency, defence, health, mining, state creation, local government creation, boundary adjustment, leaving the state with little area to exercise its sphere of control. Unlike other federal structures like the United State of America where states have the autonomy on state police, the Nigerian federal structure did not provide for such provisions even at the agitation of states to have their autonomy on the issue.

In 2003, the Lagos state government embarked on the creation of local government which was later regarded as unconstitutional and led to a legal matter between the state and the federal government. (Tadese 2012) The judgement was later passed in favour of the federal citing that states do not have the constitutional right to create such establishment. In the American federal structure allows for state power to be shared between the central, state, and municipal governments in such a way that each state has its own constitution where it derives it powers from.

Although when such laws clashes with national constitution the latter prevails. Federalism has been the major factor sustaining the democratic values as it has it functionality in both the principle of separation of powers and checks and balances which is maintained through the efficacy of institutions that guarantees a smooth democratic process.

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