

This year, when the Law Day prompt about checks and balances was released, I was fortunate because we had already learned about separation of power in Mr. Cook's Social Studies class. We studied ancient societies such as Mayans, Greeks, and Egyptians. We also learned about ancient Rome, specifically their government. It was split into three branches; the senate, the assembly, and the consul. They instituted this method so that one person or group wouldn't become too powerful. This same concept was used in the establishment of our government.

In 1788, James Madison published the Federalist No. 51. It was titled, The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments. The essay was about the idea of checks and balances and the importance of separation of powers. Madison played a leading role in convincing the majority of the Framers to incorporate separation of powers into the Constitution.

A year later, the Founding Fathers built a system of separation of power into the Constitution by dividing the government into three branches. Each branch has separate responsibilities to guarantee that the powers of the government are balanced. They can limit each other, avoiding the abuse of power. The three branches are the Legislative, the Judicial, and the Executive. This is an example of the trias politica principle which establishes the division of government into three individual branches.

Each branch has a limited amount of power and can be checked by another branch. The Legislative branch includes Congress (the Senate and the House of Representatives). They make laws, confirm or reject Presidential appointments, and they can also declare war. The Judicial branch is made up of the Supreme Court and other federal courts. They decide and interpret the meaning of laws and how the laws are used. The Executive branch is made up of the President, Vice President, the Cabinet, executive departments, independent agencies, and other boards, commissions, and committees. This branch has the responsibility to carry out and enforce laws.

According to the website [usconstitution.net](http://usconstitution.net), 'The Separations of Power devised by the Framers of the Constitution was designed to do one primary thing: to prevent the majority from ruling with an iron fist.' Madison and the Framers knew that if we didn't have a system of checks and balances, then the citizens of our nation might not fully possess the rights guaranteed in the Constitution.

However, even though we have separation of power, not everything is always balanced. For instance, *Gonzales vs. Ocentro Espirita Beneficita Uniao do Vegetal* is a case that illustrates when one branch overstepped its power and had to be checked by another. The Religious Freedom Restoration Act ensures that interests in religious freedom is protected. The Legislature passed the law with a unanimous U.S. House vote and a nearly unanimous U.S. Senate vote with only three Senators against. President Bill Clinton then signed the Act into law in 1993.

The Ocentro Espirita Beneficita Uniao do Vegetal (UDV) is a religious organization. They use Hoasca Tea in their religious practices. Hoasca Tea contains dimethyltryptamine, which is a Schedule 1 Narcotic. In 1999, a U.S. Customs Agent, ordered by U.S. Attorney General Alberto Gonzales, seized over 30 gallons of the tea that was being shipped to the Santa Fe, New Mexico branch of the UDV from Brazil. The Government seized the tea because it was a hallucinogenic drug that violates the Controlled Substances Act. No charges were filed, but the United States chapter of UDV claimed that the seizure was an illegal

violation of the church's rights. The UDV believed the usage of the drug was permitted under the Religious Freedom Restoration Act, so they sued the government. The case went all the way to the Supreme Court. The Supreme Court decided unanimously that the Religious Freedom Restoration Act of 1993 requires the government to permit the importation, distribution, possession, and use of an otherwise illegal drug by a religious organization when the government failed to prove a compelling interest. This means the government could not demonstrate the drug had a high potential for abuse or had potential health risks.

In this instance, the Executive branch exceeded their power by interpreting the law incorrectly. U.S. Customs seized the tea even though the UDV was permitted to have it due to the Religious Freedom Restoration Act. The UDV went to court and the Justices agreed with them. The Judicial branch kept the Executive branch in check by interpreting the law that was made by the Legislature. In this situation, checks and balances ensured that citizens of the United States could have the religious freedom guaranteed to them by the Bill of Rights and assured through the Religious Freedom Restoration Act.

While researching this topic, I watched a video of U.S. Supreme Court Justice Antonin Scalia discussing separation of power and checks and balances before the Senate Judiciary Committee on October 5, 2011. He asked the question, 'What is the reason that America is such a free country?' He thought most people would say freedom of speech or freedom of the press or unreasonable search and seizure; privileges contained in the Bill of Rights. But these civil liberties are all what he called "parchment guarantees"; promises that are only written on paper. Scalia said what really sets us apart is our separation of power and system of checks and balances. These systems provide a safeguard, so the three branches of the government have the ability to ensure that one person or group does not exceed their power and deny the people the rights guaranteed in our Constitution. Balance of power is the real foundation of our freedom.

-Emma Strickland