

## Checks and Balances

### **1. When one person or a small group of people hold a monopoly on power, they inevitably oppress others.**

Lord Acton famously said, “*Power tends to corrupt, and absolute power corrupts absolutely.*” When they hold too much power, even good people govern badly. This insight is at the core of constitutionalism, and it is a profound departure from much traditional thinking, in Asia but in the West as well. It is sometimes a difficult truth for traditional people to accept, because they want to venerate their leaders and give them unlimited power to keep the country safe. Traditional leaders, in turn, want to regard the people as their children, to whom they owe a paternal responsibility and over whom they exercise patriarchal authority. Breaking out of this mindset is the first step toward equitable, constitutional government.

Over time, over-concentration of power corrupts both mentally and spiritually, so that eventually even good people lose the capacity to govern well even when they want to. No person is ever wholly or purely good. All have certain biases, misconceptions, and self-interests. Good people are not people without these things; instead, they are people who try to control or even temporarily overcome them. But they need help from other people to do so, and over-concentration of power tends to rob other people of the ability to help.

Absolute power corrupts mentally because when a ruler has power over others, they tend to tell the ruler what they think he wants to know. They bury unpleasant facts, and they never express a discordant opinion or perspective. The ruler, as a result, does not know what he needs to know in order to govern well. Even worse, this mental corruption tends to give rise to a spiritual corruption: because no-one ever contradicts the ruler or presents him with unwelcome information or opinions, he comes to believe that he is without bias, misconceptions, or self-interests. He assumes that his first impression is always right. He becomes convinced that his well-being and the well-being of the country are identical. He has, in short, become a tyrant.

For this reason, a truly good leader should not want too much power. He should desire a system in which other people have influence over outcomes as well. As a result, he will be unable merely to rule by fiat; he will need to consider other perspectives. With luck, he will be forced to identify his own biases, misconceptions, and self-interests. Truly good leaders, of course, desire such enlightenment and will feel gratitude to their interlocutors, rather than imprisoning them.

Many leaders, of course, do not start out as good people at all. Instead, they openly desire power so as to dominate others and unfairly help themselves, their family, and their followers. Having power cannot actually corrupt such people because they were corrupt even before achieving power. But if they have over-concentrated power, they will immediately use it to oppress others.

In short, governments with over-concentrated power will be corrupt. The only way to eliminate the corruption is to de-concentrate power.

## **2. For that reason, constitutions should divide power among different elements of government so that they can check each other.**

Because an over-concentration of power corrupts, the solution must be found in dividing power among different parts of government. This idea is called *checks and balances*, because the constitution creates a *balance* of powers between different parts of government so that they can *check* each other. Checks and balances is the essence of constitutionalism. If no one person or small group of persons holds all the power, then no-one will have unlimited powers to oppress others. When one part of government needs the co-operation of other parts of government to secure something it wants, then it will be forced to listen, to negotiate, and to co-operate. When many different people have power to influence government action, it will likely be more equitable, because it will not serve the interests of only a small group; and it will be more enlightened, because it will reflect a process of discussion in which many perspectives were brought to bear.

Some people, especially in parts of Asia and Africa, worry that checks and balances will lead to excessive turbulence, arguing, gridlock, and even civil war. In truth, when a system of checks and balances is badly designed, it can lead to bad results. But when it is well designed, it does not lead to excessive unrest; virtually all peaceful and prosperous countries have some kind of checks and balances. And the only alternative to de-concentrated power is concentrated power, which, as already observed, always eventually leads to oppressive rule, which is much worse than political arguing.

As the next two sections describe, there are many different types of checks and balances systems, with many different combinations of elements. Careful constitutional design can effectively minimize turbulence and maximize protection against corrupt and arbitrary government.

## **3. Constitutions divide power in many different ways.**

There are many different ways to divide power between various governmental actors. For one thing, different constitutions create different government actors. Some constitutions call for a president; others call for a prime minister; and some combine executive and legislative power in a council, so there is neither a president nor a prime minister. Some constitutions recognize semi-sovereign provincial governments; others do not. Some constitutions create two houses of the legislature; others only one. In different constitutional systems, therefore, there are different actors among whom power is divided, and so the power divisions themselves are necessarily different.

In addition, even when constitutions formally create the same government actors, they can divide power between those actors in different ways. A president, for example, might have the power to veto legislation created by the legislature; or he may not. The upper house of the legislature might

have power only to advise the lower house; or it might have the power to defeat legislation proposed by the lower house. Provincial governments might have very broad power over the lives of their citizens; or they might have power only over very limited spheres of human activity.

In a short paper, it is not possible to list all the different ways to divide power, but the primary types are these:

- Most constitutions divide the power of the central government into three parts--the legislative power, the executive power, and the judicial power. These constitutions give each of these powers to a different person or group of people. Some of these constitutions try to divide these powers hermetically, i.e. there should be no overlap between the different branches of government. But some provide for some overlap, e.g. the president has the executive power but also a limited legislative veto. This method of dividing powers is called the *separation of powers*.
- Some constitutions divide power between the central government and local or provincial governments. Because this division is constitutional, the central government may not intrude into the sphere of the states. Above all, it may not dissolve state governments, nor may it try to take to itself any of the powers guaranteed to the states. Sometimes, states even write their own constitutions, and they typically have legislative, judicial, and executive actors, just like the central government. This method of dividing power is called *federalism*.
- All legitimate constitutions divide power between government and citizens by protecting individual rights. Some of these rights are personal in nature, such as the right to marry. But some are political, such as the right to protest or to form political associations. By exercising such rights, the citizens can check their government. This method of dividing power is called *individual rights*.
- All democratic constitutions further divide power between governments and citizens by holding elections. In a democratic country, the people are the fount of all authority; the government serves them, not the other way around. But the people cannot perform the day-to-day operations of government because they are busy leading their own lives. For that reason, constitutions give government officials the power to perform their duties, within their appropriate spheres, as agents of the people. The people, however, have the power of ultimate oversight. If the people dislike the way the government officials are behaving, they can vote them out of office.

**4. Although all countries need to de-concentrate power, there are many different ways to do so, and different countries must choose different systems to suit their particular circumstances.**

As illustrated in the last section, there are many ways to divide power. Some constitutions use many different types of divisions; others use only some. There is no single right way to divide power for all countries at all times. Many, many books have been written about the different ways to

divide power in a constitution. Sometimes the analysis is highly technical. As a result, it is not possible in a short paper of this kind to summarize all that learning.

Instead, the important point for present purposes is that different ways of dividing power have different effects. Because checks and balances are at the heart of constitutionalism, constitutionalists have devoted long, focused study to the effects of these different ways to divide power, both alone and in combination. But no constitutional system does everything well; there are always trade-offs, choices to be made. Some constitutional systems, for example, tend to give rise to highly inclusive but somewhat fractious politics; others will give rise to somewhat more exclusionary but also more placid politics. Some constitutional systems give rise to politics focused on ideology but not local interests; others give rise to politics focused on local concerns but not ideology—and so forth. All systems have upsides and also downsides.

As a result, different systems will work better for different countries. For each country, some upsides will seem especially important to achieve and some downsides will be especially important to avoid. For example, some countries have a cultural tendency to concentrate power in just one person, the chief executive, who then tries to gather all the rest of the power to himself. For those countries, it is very important to weaken the executive by giving more power to the legislature and the courts. There may be a downside: countries with weak executives sometimes cannot respond as quickly to changing world events. But on balance, for this sort of country, the upside of avoiding tyranny outweighs the downside of slower reaction time. The art of constitutional design consists of tailoring constitutions to particular countries in this way.