

Two Branches of Government Are All We Have Left, Scholar Says

We learn in elementary school that the American federal system is divided into three equal branches: the legislative, executive, and judicial.

But is that still the case?

Mickey Edwards, a former Congressman from Oklahoma who spent 13 years teaching government at Harvard and Princeton, says no. Here is what he wrote in [a recent Politico article](#):

Instead of three equal, independent branches, each a check on the others, today's federal government is, for practical purposes, made up of either two branches or one, depending on how you do the math. The modern presidency has become a giant centrifuge, sucking power from both Congress and the states, making de facto law through regulation and executive order.

Assuming this is true, how did it happen?

Edwards explains that Congress has largely ceded its authority to the executive branch, a unilateral disarmament that began in earnest under House Speaker Newt Gingrich that has steadily continued. Here are a few key points Edwards cites to buttress his thesis:

- "Congress has made itself not the parent of the national budget, but a secondary player often forced by its own inadequacy to tinker at the edges with what presidents demand."
- "Under the 1973 War Powers Act, hailed by its sponsors as a means to restrain the executive, presidents were given free rein to go to war so long as they notified

Congress first.”

- “To a considerable extent, Republicans and Democrats in Congress have taken to seeing themselves not as part of a separate and competing branch of government, but as arms of their respective political parties.”
- “For decades, [Congress] has repeatedly surrendered its power to protect American interests in trade deals, bowing to presidents’ requests to simply accept whatever agreements the executive strikes with other countries (often without any congressional input).”

We still have a separation of powers; it just looks different, Edwards says.

Today’s “separation of powers” is no longer between the three original, constitutionally created, branches of government, but between, on the one hand, a branch consisting of the president, his supporters in Congress and their mutual supporters on the federal bench; and on the other hand, a branch made up of the party in opposition to the president, his opponents in Congress and their co-partisans on the bench.

What to make of the claims? I suspect Edwards is largely correct.

Scholars have noted that the federal bureaucracy today [is more powerful](#) than the legislative branch. The executive branch is increasingly reliant on executive orders and [executive actions](#) to implement policies that have far-reaching consequences. (It’s important to remember that [the scope of the executive orders](#) matter more than the [total number of orders passed](#).) Few would argue that Congress has almost completely abdicated its prerogative to declare war (the U.S. has not officially declared war [since World War II](#)), and we’ve [seen some](#) of the [results](#).

I have a hunch much of the fear and outrage we’ve witnessed

the last decade or two is the result of what critics call [the imperial presidency](#). Presidents today can unilaterally make sweeping changes that impact millions of lives. This seems to bother people – at least when the other guy is in power.

Is there a solution? Sure.

As scholar Jeffrey Tucker [has observed](#), “The presence of power itself, not the people who seek to turn it to their advantage, is the source of conflict.”

Congress might have a hard time clawing back the power it ceded. The people, on the other hand, still have every opportunity.

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