

GUEST EDITORIAL

Checks and Balances: Embracing Our Patriotic Skepticism

By Ryan M. Billings, president, State Bar of Wisconsin
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On Law Day (established by President Eisenhower to celebrate the rule of law and observed annually on May 1) I think about the colonial rebels who risked their lives to create a better society. I admire their brave fight for independence. I equally admire the government they created when the war was won.

For most of human history, justice was dispensed by the local ruler. People would air their grievances, and the leader would listen (or not) and proclaim a verdict. The results depended on the ruler's whim — identical petitioners could be rewarded or executed. And even if the current leader was relatively benevolent, there was no guarantee about the next.

Our founders wanted the people to rule. But, given time and human imperfection, any government could ignore the law and lead us right back to despotic rule. The founders' solution to this problem was simple and ingenious: divide government into three branches (separation of powers) and give each branch tools to curb the others' powers (checks and balances).

The executive branch is responsible for enforcing our laws, but it is checked by the legislative branch, which creates those laws, and by the judicial branch, which can overrule the acts of the President or Congress if they violate our Constitution. The judicial branch is checked by the executive branch, which appoints judges, and the legislative branch, which approves judicial appointments and can impeach judges and the President if convicted of high crimes. The people can overrule all three branches by exercising their voting power.

The rule of law means we have three separate branches of government, each with the ability to check the others. Without the rule of law, our founders knew that we would inevitably descend into the horrors of despotism. Maybe not immediately when the "good" tyrant takes over, but "good" dictators are eventually followed by bad ones, as certainly as night follows day. To avoid the bad, we must reject the "good."

There is a lot of distrust going around these days. Both parties despair when the other wins the Presidency. Congress seems mired in partisan gridlock. Politicians point fingers at



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judges appointed by the other party. This distrust seems partly fueled by political rhetoric, but also stems from the fact that people are really struggling.

I am not going to argue that any particular branch of government is great or terrible, or that skepticism of any leader is unpatriotic. Quite the contrary, I believe that skepticism is and has always been an act of patriotism. But our skepticism should be applied equally to all three branches of government, as our founders intended.

On Law Day, I ask everyone to reflect on the genius of our careful separation of powers and critical checks and balances. The rule of law is rooted in a recognition of human imperfection. I think we can all agree that no human being or human institution is perfect. So let us embrace a system rooted in patriotic skepticism. That system, for all its flaws, is still better than any alternative.

Ryan Billings is the President of the State Bar of Wisconsin. The views he expresses are his own and do not necessarily represent the views of all State Bar members.

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