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‘A republic, if you can keep it’ – separation of powers and its influence in American politics and jurisprudence

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Bachelor’s thesis

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This Bachelor’s thesis covers the evolving jurisprudence of the United States Supreme Court’s current composition in order to highlight the recent changes in its separation of powers jurisprudence.

The paper gives a background of how the understanding of the separation of powers and the Supreme Court cases governing it have evolved in the 20th and 21st centuries. The main research materials include legal literature and a wide range of Supreme Court cases.

Each branch of government will be given a separate in-depth analysis about the cases that have influenced each branch and the implications that those cases have had for the checks and balances.

The conclusion reached is meant to shed light on the Court’s actions from the perspective that they are meant to protect the Framers' vision of a government that is kept in check by ‘we the people’ and the system of checks and balances. The reader should come to understand that what matters the most in the Court’s deliberations is not how issues like abortion, the environment and gun control are ruled on, but how those decisions uphold the United States’ unique form of government.

Keywords: separation of powers, checks and balances, the Constitution, the United States Supreme Court.

TURUN YLIOPISTO

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INTRODUCTION

On September 17th , 1787, after the signing of the Constitution of the United States by the delegates present in the Constitutional Convention in Philadelphia, a lady asked Benjamin Franklin, one of the Founding Fathers: "Well Doctor, what have we got, a republic or a monarchy?" And the 81-year-old Mr. Franklin replied: "A republic, if you can keep it."

In recent years, the United States Supreme Court has issued rulings that have gained unprecedented attention from the media and the society at-large as well. What used to be content that only lawyers posed some degree of interest towards, is now one of the most dividing political issues in America. However, this research paper will explain how the average citizen might not understand the key element, and perhaps one of the most important legal and political doctrines in the world, behind a large part of those somewhat 'controversial' decisions.

It is quite bizarre to see that the societal conversation and debate stirring around these rulings tends to ignore that same principal element both when discussing the case argumentation itself and when suggesting solutions to fix the supposed 'problem' at the Supreme Court. Cases like *Dobbs v. Jackson Women's Health Organization* and *West Virginia v. EPA* are thought to be cases governing abortion and environmental protection, respectively, when in truth the real substance of the matter in these and many other cases is a doctrine that the majority of Americans either don't understand[1] or on a subconscious level want to defy Mr. Franklin. This phenomenon is especially interesting considering that the Republic itself was built on this very idea: the separation of powers.[2]

Perhaps one of the best explanations of why the American form of government was set up the way it was in 1787 was offered on October 5th, 2011 by Justice Antonin Scalia of the United States Supreme Court. Scalia delivered his opening remarks as a part of a testimony on American exceptionalism before the Senate Judiciary Committee, trying to explain to Americans what the separations of powers meant. He expressed worry to the committee that even in the best law schools of the country, never more than 5% of the students have read *The Federalist Papers* in full. Scalia continued by asserting that it was not the Bill of Rights that makes the United States so exceptional, but rather the structure of their government that prevented the centralization of power. For according to Scalia, every banana republic in the world and even the 'evil empire' of the Soviet

[1] Kurland, at p. 592 (1986).

[2] *Dobbs v. Jackson Women's Health Organization*, 597 U.S. __ (2022) (Slip Opinion) at p. 6; West Virginia v. EPA, 597 U.S. __ (2022) (Slip Opinion) (Gorsuch, J., concurring) at p. 3

Union have had a Bill of Rights, the Soviet version even being far better than the American one. He expressed great worry towards the assertion that by having a bicameral legislature, a separately elected chief executive and courts capable of judicial review, the American system is nothing more than a gridlock. According to Scalia, the gridlock was exactly how the Framers had intended the government to function to ensure that the legislation passed was good and not in excess, and that Americans should learn to love the gridlock, that is the separation of powers, again.[3]

Scalia's testimony highlighted the fact that already in 2011 the words of Dr. Franklin had become a distant memory of a by-gone era. While the fear of tyrannical rule and the desire to be free were of utmost concern to the colonial citizens in 1776 and the Framers during the summer of 1787, no longer is political debate dominated, let alone even overshadowed by themes like preventing centralization of power and governmental overreach. What once was almost a primal fear for Americans and a cause worth fighting a war of independence for has been replaced with a mentality of deferring to the government's actions while denouncing those who are skeptical of them.

In spite of years or even decades worth of evidence of the government breaching the public trust, an attitude of 'the government wouldn't do that' has still managed to prevail. Scandals like the Iran–Contra affair and the Snowden leaks combined with more recent events like the release of the Durham report have not led to a change of course in the public opinion. It is thus quite ironic that it is the Supreme Court, responsible for enforcing checks and balances and keeping the centralization of power at bay, that has enjoyed a drastically decreasing approval rating in recent years.

That approval rating, however, is not a rejection of the checks and balances but a show of dissatisfaction towards the implications that the decisions have had. For a large part of the history of the United States and its highest court, though, the doctrine of separation of powers itself has not been openly challenged. It is fair to say that the doctrine itself is not being questioned. Rather, it is facing indirect undermining with judicial decisions and the principle of judicial review having received much criticism for decades already.[4] In an increasingly polarized political field, divisions have managed to literally creep up the steps of the Supreme Court as well.[5] This might have become

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[3] Antonin Scalia, *Opening Statement on American Exceptionalism to a Senate Judiciary Committee* (Mar. 12, 2024, 5:43 PM). https://www.americanrhetoric.com/speeches/antoninscaliaamericanexceptionalism.htm

[4] Prakash, Yoo; at p. 889 (2003).

[5] Editorial Board, *Sen. Chuck Schumer's threatening rhetoric to Supreme Court justices crosses a line,* USA TODAY (Mar. 13, 2024, 7:43 AM).

the new status quo since the new conservative majority started to change course on the Court's separations of powers jurisprudence, strictly enforcing checks and balances from the bench. This paper examines how the interpretation of the doctrine has changed in recent Supreme Court rulings, how those rulings have been argued and what kind of effects they have had in all of the three branches of government.

In the first part of the text I will examine the legislative branch and how the Court's recent rulings have restored some of its constitutionally guaranteed powers. An emphasis will also be placed on how the legislative branch jurisprudence might evolve in the following years. The second and third parts will be constructed in a similar fashion with their focus on the executive and the judicial branch, respectively. In the final part, I will reach a conclusion of the Court's current role, jurisprudence and what it means for the United States of America as a whole. Moreover, the conclusion and text in general seek to shed light on what the Court's recent rulings are really about.

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RESEARCH MATERIALS AND METHODS

The examination of the separation of powers doctrine involved an extensive review of scholarly articles and relevant court cases with supplementary online resources being put to use as well. These materials provided a comprehensive understanding of the historical context, theoretical frameworks, and practical applications of the doctrine, and also how they might affect the society at-large.

The paper seeks to quickly introduce ideas from intellectual giants like Benjamin Franklin and Antonin Scalia to better help the reader grasp the key issues at hand when discussing and examining the separation of powers doctrine. Particular emphasis was placed on both case genetics and case argumentation analysis to better examine recent developments in how the doctrine of separation of powers has been and is interpreted. Past, present and also future cases were analyzed to discern evolving judicial interpretations and their implications for the checks and balances among the branches of government.

Supplementary materials like legal literature are used to illustrate how the judicial doctrines and ideas sponsored by the Court's rulings have not been born inside of a vacuum and thus ended up in the judicial opinions of the Court by accident. Whilst the recent rulings of the Court might not have a majority of the people backing them, there still an intellectual movement and a legal rationale behind them.

A bigger picture and a concrete conclusion could thus be reached through analyzing the cases in a chronological pattern. The paper tries to illuminate where the Court once was, how that all has changed and where it might be headed. In some sense this is done to demonstrate how the Court has gone 'back to basics', rather than developed something brand-new, with its interpretation of the Constitution in the context of the separation of powers. The paper analyzes all of the three branches of government separately whilst also acknowledging that when checks and balances are enforced, power is simply being redistributed and not necessarily created.

The core purpose of the paper is to shed light on the fact that the conservative majority's reasoning, philosophy and jurisprudence is well-based in the Constitution and laws and that the recent rulings are not some conservative coup of America but rather a restoration of the ideals that America and its laws were founded on. In the Finnish context, where American politics and jurisprudence are

often ridiculed, the paper might also serve as a first step for someone who wishes to challenge the assertion that the American system is nothing more but gridlocked and broken.

THE LEGISLATIVE BRANCH

Perhaps the most visible part of how the Court's new conservative majority has enforced checks and balances is reining in the administrative state. This had led to many elaborate and well-disguised attacks on the Court supposedly being for example anti-environment. Rather than making unbiased explorations into the Court's cases from the recent terms it seems like there is a deliberate effort to show how evil Justices Alito, Barrett, Kavanaugh, Roberts and Thomas are.

It all started when President Donald Trump managed to make three successful appointments (Gorsuch, Kavanaugh and Barrett) to the nation's highest court. While the first year of the Court's new 6-3 majority was relatively silent, the cases that were decided in 2022 would bring both unprecedented amounts of attention to the Court and also vast changes to its separation of powers jurisprudence.

Concerning the legislative branch's power, the ruling in *West Virginia v. EPA* (2022), resulting in what some might call a partial dismantling of the administrative state and its many agencies, has been a subject of liberal critique. In the case, the Supreme Court addressed the authority of the Environmental Protection Agency (EPA) and whether Congress had explicitly granted the EPA the authority to devise emissions caps through a particular method. The Court, in its decision, invoked the so-called 'major questions doctrine' to scrutinize the EPA's interpretation of Section 111(d) of the Clean Air Act, concluding that Congress had not explicitly granted EPA such authority.

The core principle of the major questions doctrine stems from the idea that certain policy decisions, due to their importance or implications, should be left to Congress to decide rather than being delegated to administrative agencies. The Court's new majority thus for the first time reflected concerns about the separation of powers in a manner that also had broad societal implications.

Accusations hauled against the ruling included that the EPA can't stop climate change as a result of it, but the more pragmatic and legal-minded critique of the majority opinion delves around how the Court supposedly invented a new doctrine[6] by itself without even considering the *Chevron* deference, the current guiding principle of how agency actions are interpreted.[7] Although the 'major questions doctrine' was invoked for the first time by the Court in *West Virginia v. EPA*, the *Chevron*

[6] *West Virginia v EPA*, at p. 11.

[7] Lemley, at p. 99-101, 114 (2022).

deference[8] along with many other Court-approved legal doctrines are also to some degree its own inventions.[9]

To understand the current state of the jurisprudence concerning the powers of the legislative branch, the case examination must start with *Chevron*. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.* (1984) was a case also involving the Environmental Protection Agency and more specifically its interpretation of the word 'source' in the Clean Air Act of 1963. The case has often been called the most important case of American administrative law.[10] It was the first case in 40 years, during which time the amount of federal agencies had significantly increased, to update the Court's interpretation of what kind of deference is allowed for agency action and rulemaking.

From the perspective of the separation of powers, *Chevron* addressed the balance between the legislative, executive, and judicial branches in the context of agency rulemaking and interpretation. It raised questions about the appropriate role of the judiciary in reviewing and second-guessing agency decisions and ultimately established the current framework for judicial deference to agency interpretations.

In *Chevron*, the Court's majority opinion emphasized the idea that when Congress delegates authority to an agency to implement and interpret a statute, the judiciary should then respect and defer to the agency's interpretation if that interpretation meets certain criteria; (1) first, the court must determine whether Congress has directly spoken to the precise question at issue. If the statute is clear, the court must give effect to Congress's intent. However, if the statute is ambiguous or silent, the court moves to the second step, (2) deferring to the agency's interpretation if it is reasonable. [11]

The Court reasoned that Congress, by granting rulemaking authority to agencies, implicitly delegated to them the power to fill statutory gaps or resolve ambiguities. Justice Stevens articulated the two-step Chevron framework, recognizing the practical need for agencies to supposedly fill in legislative gaps and make policy decisions within their areas of expertise whilst abiding by the

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[8] *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

[9] Merrill, at p. 1154-1155 (2021).

[10] *Id.* at p. 1154.

[11] *Chevron v. National Resources Defense Council*, at 842-844.

intent of the lawmakers themselves, thus creating the *Chevron* deference. However, the future of the *Chevron* deference in the context of the legislative branch is quite uncertain.

Whilst the Court in *West Virginia v. EPA* did not overrule the decision in *Chevron*, it significantly narrowed down the scope of what is within the power of administrative agencies like the EPA. By invoking the 'major questions doctrine', i.e. that agencies can't act on issues that the court considers questions of major political and economic significance, the majority opinion expressed concern that allowing such conduct might violate the separation of powers.[12] The Court held that without explicit authorization the power of deciding on major questions must be vested in the Congress and not the agencies of the executive branch, thus strengthening the role of elected lawmakers over bureaucrats.

However, *West Virginia v. EPA* is not the only case concerning administrative agency power. The Court is for example currently considering whether to overrule *Chevron*, and a decision in the case is expected at the end of the current term.[13] Agency power had also had its day before the Court a few years prior to the ruling in *West Virginia v. EPA*. The case *Gundy v. United States* (2019) focused on whether Congress unconstitutionally delegated legislative power to the Attorney General by allowing him to specify certain aspects of a law called the Sex Offender Registration and Notification Act.[14] From the perspective of checks and balances, the key issue in the case was whether the court would invoke the 'nondelegation doctrine'. The doctrine is a way of interpreting Article I of the Constitution in a way that bars the delegation of any lawmaking power from Congress to other bodies like administrative agencies or in the case of *Gundy*, the Attorney General.

Gundy had only minor implications for the separation of powers doctrine, particularly in the context of congressional delegation of legislative authority to executive agencies. The Court's decision, with Justice Kagan writing the plurality opinion, maintained that Congress could delegate authority to executive agencies if it provides an 'intelligible principle' to guide the agency's discretion. The Court thus chose not to invoke the nondelegation doctrine for the first time in 84 years. The decision did not establish a clear majority opinion, indicating some divergence among the justices on the issue of nondelegation, with Justice Alito stating his inclination to invoke nondelegation should the decision be revisited in the future.[15]

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[12] *West Virginia v. EPA*, at p. 19.

[13] *Loper Bright Enterprises, Inc. v. Raimondo*, 45 F. 4th 359 (D.C. Cir. 2022).

[14] *Gundy v. United States*, 588 U.S. ___ (2019) (Slip opinion).

[15] *Gundy v. United States* (Alito, J., concurring) at p. 1.

While the decision thus did not drastically alter the existing framework for delegation, it underscored the ongoing shift within the Court in the views on permissible limits of congressional delegation of legislative authority. Had the dissenting opinion prevailed and the nondelegation doctrine been invoked more robustly, it could have set a stricter standard for congressional delegation of legislative authority to executive agencies. This might have led to a re-evaluation of existing statutes and regulations, potentially rendering some of them unconstitutional and thus could have significantly decreased the administrative state's power. With its core question becoming moot, the current case challenging the *Chevron* deference, *Loper Bright Enterprises v. Raimondo*, would never have come before the Court, since the nondelegation doctrine and the *Chevron* framework clearly point to opposite directions.[16]

[16] Merrill, at p. 2172 (2004).

THE EXECUTIVE BRANCH

Naturally, the cases and issues concerning the legislative branch are also affecting the executive branch. In many instances, when the court hears and decides cases that seek to rein in the administrative state, it is simultaneously saying that certain issues are not the business of bureaucrats in the executive branch but that the issue should be regulated and decided by the people's elected representatives. The Court doesn't simply grant jurisdiction or create new power to one of the branches, but rather redistributes it when a branch has exceeded its authority. This is what Justice Scalia also touched on in his testimony, when describing how the Framers intended for the form of government to be power contradicting power.

However, perhaps one of the most debated legal issues of today covers almost exclusively the executive branch alone. This issue is centered around a doctrine called the 'unitary executive theory'. Sourced from the Vesting Clause of Article II of the Constitution which states that 'the executive power shall be vested in a President of the United States of America', the proponents of the theory argue that the whole executive branch of government serves at the pleasure of the President.[17] Perhaps the most recent application of the theory took place in the Republican primary for the 2024 United States presidential election, when candidate Vivek Ramaswamy pledged to cut 75% of the federal workforce should he have become the eventual president. Legal scholars showed at least some degree of skepticism towards the plan, citing congressional control over the creation of agencies and departments of the Cabinet and the need for a cause to remove or fire executive personnel.[18]

What makes the current debate on the executive branch so interesting is the fact that even the Framers themselves might not have anticipated that the executive branch would balloon in size to be the behemoth that it is today. With the 20th century being the decisive factor in the expansion of the federal government, presidents like Theodore Roosevelt, Woodrow Wilson, Franklin Delano Roosevelt and Lyndon B. Johnson significantly propped up the role of the executive branch with the establishment of departments and agencies like the Department of Commerce, the Food and Drug

[17] Sunstein, Vermeule; at p. 83 (2020).

[18] Chris Cameron and Charlie Savage, *Ramaswamy Says He Would Fire Most of the Federal Work Force if Elected*, The New York Times (Mar. 13, 2024, 10:21 AM).
https://www.nytimes.com/2023/09/13/us/politics/vivek-ramaswamy-dismantle-government.html

Administration, United States Forest Service, the Federal Trade Commission and many others. The launch of programs like the New Deal and the war on poverty was also a significant step towards the federal government assuming more power to itself. The expansion seen in the size of the federal workforce thus inevitably led to the judicial confrontations that emerged as early as before the Great Depression and the New Deal era. So, whilst not specifically referred to by its now-known name, the unitary executive theory's substance has been a part of the Court's adjudication and jurisprudence for almost a hundred years now. During recent Supreme Court terms the theory has been invoked to argue that agency independence of the President's control, for example the President's inability to summarily fire an agency director, is unconstitutional. The following cases will perhaps illustrate that as the federal government grew in size, so did the interpretation of the theory evolve.

In *Myers v. United States* (1926), the Court addressed the President's authority to remove executive branch officials without the consent of the Senate. The case arose from President Woodrow Wilson's, a Democrat, attempt to dismiss a postmaster appointed by his Republican predecessor William Howard Taft. In a narrow 5-4 decision, the Court ruled in favor of presidential authority, affirming the President's inherent power to remove executive officers without congressional approval, stating in the opinion that the President has 'unencumbered removal powers'.

However, only nine years later and in the midst of the New Deal era, a case called *Humphrey's Executor v. United States* (1935) dealt again with the President's removal powers. President Franklin D. Roosevelt's attempt to remove a commissioner of the Federal Trade Commission (FTC) without cause was challenged and the Court ruled against Roosevelt, asserting that certain officers, such as those in quasi-legislative or quasi-judicial positions like in independent regulatory agencies, could not be removed by the President at will but only for cause. In its ruling the Court rejected *Myers*'s assertion that the President had unencumbered removal powers.

In *Morrison v. Olson* (1988), the Supreme Court upheld the constitutionality of the Independent Counsel Act, establishing that the appointment of an independent counsel did not violate the separation of powers.[19] The Act had been passed in the aftermath of the Watergate scandal when President Nixon ordered his Attorney General to fire the special prosecutor investigating him. Chief Justice Rehnquist, writing for the majority, argued that the special prosecutor's role was

[19] *Morrison v. Olson*, 487 U.S. 654 (1988).

circumscribed and subject to executive branch oversight, preserving the President's authority.[20] However, Justice Scalia argued in his lone dissent that while the creation of an independent counsel's office might be a beautiful idea to ensure that nobody is above the law,[21] it violates the separation of powers by creating a 4th branch of government by not being subject to the President's removal powers.[22]

However, the Court's approach to executive power evolved in *Seila Law v. CFPB* (2020). In this case, the Court, in a 5-4 decision, addressed the structure of the Consumer Financial Protection Bureau, ruling that the provision limiting the President's ability to remove the director only for cause was unconstitutional.[23] The decision, authored by Chief Justice Roberts, emphasized the significance of the President's removal power in maintaining executive accountability to the people. In essence, the Court held that the President could remove agency heads at his own discretion without requiring a specific cause for the removal. The exception to the rule construed by the Court in accordance with *Morrison* was that the summary removal power did not apply to inferior officers with no policymaking role.[24]

This evolution too reflects a nuanced shift in the Court's interpretation of presidential power. While *Morrison* upheld a measure allowing for a degree of independence within the executive branch, *Seila Law* underscored the importance of the President's unfettered control over executive officials. The latter decision signals a less complex approach, prioritizing the traditional understanding given by the Constitution of the President's authority to ensure accountability to the people within the executive branch. This evolving jurisprudence again suggests that there is an ongoing re-evaluation of the separation of powers doctrine and that the Court is willing to enforce the checks and balances of the Constitution.

What *Seila Law* established and represented at the same time was a return to an age of lesser administrative influence. In the past, many of the current agencies did not even exist, but instead of outlawing them, *Seila Law* made them more accountable to the President. Chief Justice Roberts argued that reliance on agency expertise does not mean that government should be ruled by those

[20] *Id.* at p. 695-696.

[21] Bravin, at p. 1103 (1998).

[22] *Morrison v. Olson* (Scalia, J., dissenting), at p. 726-727.

[23] *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. ____ (2020) (Slip opinion).

[24] *Id.* at p. 16.

experts.[25] Although 'numerous government agencies and commissions have long had independent leadership',[26] the recent political history of the United States with all its partisan special counsel investigations should by now have shown that Justice Scalia was onto something in his lone dissent in *Morrison v Olson* when expressing concern that the majority opinion had opened the door to politically motivated and partisan investigations.[27] *Seila Law* and its acknowledgement of the risks of having independent agencies was only the Court's logical continuation of the late Justice's work.[28]

[25] *Id.* at p. 30.

[26] Lemley, at p. 104.

[27] *Morrison v. Olson* (Scalia, J., dissenting), at p. 730.

[28] Mashaw, at p. 13 (2020).

Of course, none of this would be possible without the Court's authority to exercise judicial review. Its foundations were laid by *Marbury v. Madison* (1803)[29], a landmark case that stands as one of the most pivotal and influential cases in the history of American jurisprudence. This case not only addressed a political dispute of its time but, more importantly, established the enduring principle of judicial review. Chief Justice John Marshall's opinion in *Marbury* fundamentally shaped the role of the judiciary in the American system of government, leaving a lasting impact on constitutional interpretation, checks and balances, and the development of U.S. constitutional law. Most importantly, Marshall secured the judicial function.[30]

At its core, *Marbury v. Madison* solidified the concept of judicial review, affirming the Supreme Court's authority to review and declare actions of the other branches of government unconstitutional. This revolutionary decision provided the judiciary with the power to serve as a check on the constitutionality of laws and executive actions. Chief Justice Marshall's astute reasoning established the precedent that the Court could invalidate laws inconsistent with the Constitution, marking a crucial evolution in the American legal system.

The significance of *Marbury* extends beyond the establishment of judicial review; it played a vital role in defining the system of checks and balances inherent in the U.S. Constitution. By asserting the judiciary's authority to interpret and apply constitutional principles, the decision ensured that each branch of government had distinct roles and powers, preventing an unchecked concentration of authority. This careful balance became essential for safeguarding individual rights and preserving the integrity of the nation's democratic governance.

The judicial branch's independence has perhaps only once been faced with a profound threat. During Franklin D. Roosevelt's presidency, he proposed a controversial plan to expand the size of the Supreme Court, commonly known as court-packing. Frustrated by the Court's repeated invalidation of New Deal legislation, Roosevelt sought to appoint additional justices sympathetic to his policies. However, this plan faced significant opposition, with critics viewing it as an attempt to undermine the independence of the judiciary. Notably, before Roosevelt could implement his plan, a

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[29] *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

[30] Frankfurter, at p. 217 (1955).

pivotal shift occurred within the Court itself. Justice Owen Roberts, previously aligned with the conservative bloc, began voting to uphold New Deal legislation, perhaps in an effort to preserve the Court's nine-member composition. This change, often referred to as the 'switch in time that saved the nine', is widely believed to have been influenced by Roberts's desire to maintain the Court's legitimacy and independence amid the threat of Roosevelt's plans. As a result, Roosevelt's court-packing plan ultimately failed, but the episode underscored that the delicate balance of power between the branches of government and the importance of an independent judiciary were not self-evident even in the United States.

Both Chief Justice Marshall's articulate opinion in *Marbury* and Justice Roberts's delicate effort to preserve the Court's independent role showcased a method of constitutional interpretation that emphasized the supremacy of the Constitution and the Court's role as its final interpreter. The decision in *Marbury* highlighted the judiciary's duty to interpret the Constitution independently and to serve as the final arbiter of its meaning. The concept of judicial review established in the case has been reaffirmed and applied in numerous subsequent decisions, reinforcing the judiciary's role as the guardian of constitutional principles. The legacy of *Marbury* resonates in the principles guiding constitutional interpretation and the enduring commitment to upholding the Constitution's supremacy in the American legal system. The Court is merely reining in such powers from all branches of government that shouldn't be exercised by them in the first place; exactly in the way of how the Constitution's checks and balances system and the decision *Marbury* were intended.

CONCLUSION

Although the average citizen might see the Court's recent rulings as a power-grab or a bloodless coup d'état, it is quite evident that the Court simply continues its over two centuries old task, first articulated in the Constitution and *Marbury v Madison*, of enforcing the checks and balances of the Constitution. The transition from the landmark decisions of *Chevron* and *Morrison v. Olson* to the vision first articulated by Justice Scalia during his testimony and then enacted by the Roberts Court's new conservative majority marked a significant evolution in the way checks and balances are upheld. *Chevron*, establishing deference to administrative agencies' interpretations of statutes, reflected a more deferential approach to executive authority only to be diminished in power by *West Virginia v. EPA* and its future left in an uncertain state by *Loper Bright Enterprises v. Raimondo*.

Morrison, on the other hand, upheld the constitutionality of an independent counsel, emphasizing what was first a beautiful post-Watergate idea of nobody being above the law but later degenerating into a vehicle for partisan investigations just like Justice Scalia had warned. Like his lone dissent in *Morrison*, Justice Scalia was once again ahead of his time in his testimony that advocated for the shift towards the reinvigoration of the separations of powers doctrine, championing the very system that others were vehemently criticizing. This shift, that started to come to fruition only ten years after the testimony and five years after Scalia's death, underscored a growing emphasis on limiting judicial deference and reasserting the judiciary's role in interpreting the law no matter how unpopular the outcome, thereby influencing subsequent legal discourse and shaping the Court's approach to separation of powers as well.

One might say that the Court has merely gone back to the basics articulated in *Marbury* with its jurisprudence and restored power to those figures and bodies that can be found in the language of the Constitution whilst seeing especially the role of the administrative state as the real power-grab that violates the separation of powers.

The separation of powers doctrine established the very structures meant to protect 'we the people'.[31] To ensure that protection, the people need to learn to embrace those institutions that safeguard it, even if that sometimes means unwanted political outcomes. In conclusion; to breach one of the

[31] Amar, at p. 1493 (1987).

most, if not the most, guiding principles of the entire nation's foundation, is to ignore what Justice Scalia told the Senate Judiciary Committee in his testimony's opening remarks.