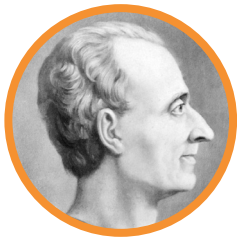


Ohio's Constitution and the Separation of Powers: A Timeline

As James Madison wrote in Federalist 51, “The great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others.” Today, though many state constitutions expressly state a system of checks and balances, in Ohio, separation of powers is implied from the structure of the document itself. It confers three powers of government – legislative, executive and judicial – upon three separate and distinct entities – the General Assembly, the Governor and the Judiciary — in Articles II, III and IV respectively. History shows that it wasn't always this way in Ohio and now, some argue that we've tipped into another uneven division of power. To understand where we are, we take a look at how we got here with this timeline.



Montesquieu publishes his treatise, “L’Esprit des Lois” or, “The Spirit of Laws,” in which he argues that liberty is most effectively safeguarded by the separation of powers. The work profoundly influences the founding fathers of the United States and their framing of the Constitution.

1748

1787

The doctrine of separation of powers is adopted at the Constitutional Convention of 1787.

1799

The first meeting of Ohio's legislature takes place in Cincinnati as a prerequisite to statehood, though it remains part of the Northwest Territory. William Henry Harrison is elected as the territory's representative to Congress.

1802

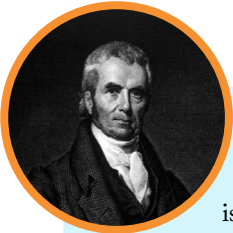
On April 30, President Thomas Jefferson signs a law allowing Ohio to draft a state constitution and formally apply for statehood. Later in the year, 35 delegates gather in Chillicothe to draft Ohio's first constitution, in which power is largely vested in the General Assembly.

The General Assembly appoints all state and county judges for a fixed period of seven years and selects all state executive officers, except the popularly-elected Governor, who has few powers.

Ohio is admitted to the Union as the 17th state.

At the same time, *Marbury v. Madison* becomes the first case in which the U.S. Supreme Court declares an act of Congress unconstitutional, establishing the power of judicial review and ensuring the judiciary as a coequal branch of government. It also puts the federal government at odds with Ohio's brand of legislative supremacy.

1803



“The judicial power of the United States is extended to all cases arising under the constitution.”
 – Chief Justice John Marshall, *Marbury v. Madison*

In response to the 1807 Ohio Supreme Court ruling, the legislature adopts the infamous “Sweeping Resolution.” It ends all court terms of common pleas court judges and Supreme Court justices. This was after a failed impeachment attempt of two of the justices following the ruling.

Ohio adopts its second constitution, significantly reducing the General Assembly’s authority, giving voters the ability to elect (in addition to the Governor) other high-ranking officials and judges, and adding a third level of district courts between the Supreme Court and common pleas courts. This becomes the constitutional structure under which Ohio operates today, save for a few amendments along the way.

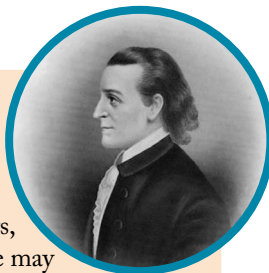
Voters enact the Modern Courts Amendment, changing structure of Ohio’s court system, the training and education of judges, the tracking and policing of caseload management, the access of the public to court records and empowering the Ohio Supreme Court to be the ultimate arbiter of the functioning and supervision of the courts of Ohio. The Supreme Court also regains the ability to declare statutes unconstitutional with a simple majority.

1807 | 1810 | 1850 | 1851 | 1912 | 1968

The Ohio Supreme Court decides *Rutherford v. M’Faddon*, establishing the right to review the constitutionality of legislative and gubernatorial actions.

Ohio holds its second constitutional convention to deal with the overzealous legislature.

The Constitution is amended to expand Ohio’s bill of rights, give voters the powers of initiative and referendum and establish a minimum wage and workers’ compensation system. A provision requiring the concurrence of all but one Supreme Court Justice to declare a statute unconstitutional is added and the Governor’s veto power is limited to line items in appropriations.



“A great and paramount object of the constitution is to prescribe to the legislative and judiciary powers, the precise sphere in which each is to act, that there may be no clashing interference or occurrence of authority. ... This principle in our constitution is founded in the wisest policy, as it raises an insuperable barrier against encroachments of one branch on the rights and powers of another.”
 – Justice Samuel Huntington, *Rutherford v. M’Faddon*