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A Theory of Existence of the Fourth Control Branch of the Government: A Comparative Analysis

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Abstract

This paper is aimed to discuss factual existence of the fourth-independent branch of the government in the US, which could be titled as “Control Branch”. Despite the fact that it’s not constitutionally or statutorily recognized as a separate branch of the government, on the example of US Government Accountability Office and Inspector General Community, author proves the factual independence and place of this “branch” in a system of federal government, its role as an independent actor in a line with legislative, executive and judicial branches. Some examples of interaction among “four branches” are provided. Throughout the paper theoretic discussion is held and practical implications of theory are displayed, in a line with bringing some international examples of the theory being concluded in a legal practice, with focus on the current processes of Government Control in Armenia. In conclusion some findings are revealed, which in author’s opinion are hardening the process of Government Control and some recommendations are made to improve accountability and transparency in Federal Government operations in all Branches.

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Historical and Theoretical Developments of the Control “Fourth” branch

In a current stage, multispectral globalization of the world in political, legal and economical aspects brings challenges faced by all governments worldwide, which assume paying closer attention on the implementation of the adopted laws and policies on national and international level. In different countries governments may be formed, structured and act in different ways, however the functions and objectives of every government is almost the same in any country. Most of the countries have adopted constitutions, in which those objectives are prescribed. One of the main achievements of current Constitutional solutions is separation of state powers among different government branches and lower administrative agencies/actors. Nowadays most of the constitutions delineate just three branches of the Government dividing them into legislative, executive and judicial ones. The idea of Constitutional separation pursues several goals among which are the independence of each branch and checked power exercised by two others. The original idea of separation of powers can be traced back to the Roman Republic\(^1\). However, current system of political separation is based on the tripartite system proposed in 18th century by several thinkers and philosophers outlined by Baron de Montesquieu. The tripartite model was not the only one on agenda since John Calvin proposed bipartite system of political power (mixed power) between democracy and aristocracy in the sixteenth century\(^2\). Both of these power separation models were revolutionary for their time and tripartite system is still actual in almost every country with minor exceptions.

The law in general and constitution in particular are the core pillars of statehood, which assure public order and development, thus bringing the law as inalienable part and

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\(^1\) The Greek Historian Polybius while speaking on Roman Constitution brought an example of shared governance in the Roman Republic: “The three kinds of government that I spoke of above all shared in the control of the Roman state. And such fairness and propriety in all respects was shown in the use of these three elements for drawing up the constitution and in its subsequent administration that it was impossible even for a native to pronounce with certainty whether the whole system was aristocratic, democratic, or monarchical. This was indeed only natural. For if one fixed one’s eyes on the power of the consuls, the constitution seemed completely monarchical and royal; if on that of the senate it seemed again to be aristocratic; and when one looked at the power of the masses, it seemed clearly to be a democracy. The parts of the state falling under the control of each element were and with a few modifications still are as follows”. Thus in the Roman Republic, the functions of government, were separated among the Senate, Consuls and the Assemblies. This style could be considered as one of the first examples of separation of powers, in which every of its actors was given its role to play in the system governance. For example Senate held: “To pass to the senate. In the first place it has the control of the treasury, all revenue and expenditure being regulated by it. For with the exception of payments made to the consuls, the quaestors are not allowed to disburse for any particular object without a decree of the senate. And even the item of expenditure which is far heavier and more important than any other — the outlay every five years by the censors on public works, whether constructions or repairs — is under the control of the senate, which makes a grant to the censors for the purpose”. Polybius (Histories, Book 6, 11-13). [http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Polybius/6*.html](http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Polybius/6*.html)

\(^2\) The first implementation of bipartite system took place in present day Massachusetts in 1620 by a group of English Congregationalist, later becoming known as Pilgrim Fathers.
regulatory tool of social relations. Having a regulatory meaning, law requires to be amended, in order to meet growing needs of developing society. A glance back to several decades, one could not imagine how far the legal regulatory function has gone, since several decades ago no one could predict such huge development of science and technology, which humanity currently enjoys. Throughout the history, law has been developed to regulate the advancement of the life, society and technology. From this view Constitution and laws are seen as vital component of the society’s development. This is to say that, although the tripartite government system proposed several centuries ago is still of current interest, it is obvious that during these decades in a line with society’s development the laws has always following up to suit new challenges. Concluding, current legal framework has at least theoretically and for some sense factually developed novice Government branch, which currently is not generally considered as separate one in many countries including the US. However, In my opinion, exactly the US could be considered as a pioneer in establishing an independent and unique Government Control system (branch), which precisely may be named as Controlling branch. However, the US Constitution doesn’t allow this unique system to be formally declared as separate branch of the Government and one of the main actors of this power is the US Government Accountability Office, which declaratively is nested under the Congress or other institution(s) in this system are Inspector General’s offices, which have relatively young history but they have proved independence from either branch of the Government.

Government Control, being one of the main functions of the country's governments in management activities, requires close theoretical attention and guiding from academic society, since the purpose of this power is only overseeing the activities of other branches on the subjects of fraud, efficiency, legality and reliability. One would argue that each of the constitutionally-recognized three branches has its own controlling powers and that ensures the system of checks and balances. Having agreed with this, it is obvious that the unique role of Control power derives from it's nonpartisanship and effectiveness of its operations depends on the openness, transparency, public record and accountability of its activities.

The control function of the Government literally relates to every aspect of society’s life and social relations. Control, as a management function is a pillar of powers disseminated among different branches and agencies of the government, authorizing them to exercise certain activities aimed at proper implementation of the legislation and rules.

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3 This theory arises as conclusion of investigating legal aspects establishment, development and operations US Government Accountability, as well as Inspector Generals Offices in Federal agencies.

4 Unsimilar to the US practices in Armenian society and legal acts utilize the term “Government” to be applicable only to executive branch of the State Power.
The nature of control comes from the stage of planning of a certain action in management circle. Control consists of some actors and elements; actors are the subjects of control e.g. the controlling and controlled, and the object of control is topic to be controlled. In the meantime, same entity or institution can act as both, the controlling and controlled depending on the role it is assigned by the law for the exact case. In brief description control may be characterized as multi-step procedure of managerial activity, which includes defining and analyzing factual data on operation, collating the results with the objectives to be met, grading a controlled activity, taking steps aimed at improving deviations and taking steps to prevent repeating of deviations.

The effectiveness of control depends on many aspects, which may vary from quality of legal acts to human factor. Unlike the US, where the president ousted head of a federal agency based on the report from the Control entity, for politically motivated decision making in oversight process, currently, in many developing countries government control is politically motivated and existence of quazi-independent agencies makes little sense to this. In fact, some authorities are duplicated by several government bodies or agencies as their regulations and rules are resembled. This situation contradicts to both international experience and domestic legislation. For example, one of the main challenges for the current legislation of Armenia and Control system itself is that there is no exact differentiation of terms "Control" and "Supervision". This was not taken into the account while amending and adopting legislation after the Soviet era. Thus, many inconsistencies occur in the current legislation, which are reflecting on the society and correspondingly to the economy. This partly occurred because while drafting legislation on these activities linguistic peculiarities of Armenian language were not considered. The fact is that control and supervision activities do not have international binding or compulsory principles like in other legal fields, such as Human Rights, civic, criminal and administrative ones. There is no any declaration, treaty or other type of international agreement which is ratified by the National Parliaments and is mandatory for the Countries. There are some international organizations such as

7 In this regard it is noteworthy to mention that in the U.S. Government Accountability Office has special oversight on the duplication, fragmentation, overlap activities within the federal government http://www.gao.gov/duplication/overview.
INTOSAI, EUROSAI, and ASOSAI\(^8\), (on international and regional levels) which try to develop the standards for national institutions, but yet they don't have a mandate to adopt binding documents, thus they have only advisory papers. Noteworthy to state, that Control and Supervision are not the same, and resemblance of these terms in the legislation risks not only the effectiveness of both of them, but also leads to misconduct of power. Supervision can be regarded as a component of control procedure, since it's constant process in management circle, while control can be conducted partially in the same process, e.g. from time to time. Some countries' Constitutions even define the difference of Control and Supervision\(^9\) in the text.

In my point of view the key element of conducting control should be identification and recognition of the objectives, reasons, aims, methods, terms and conditions as well as the substantiations of control. While acquiring the special literature on the topic I got the idea that the authors have not a unity in their opinions about the term of Control, and it is interpreted in different meanings and ways, which causes some misunderstanding and incorrect wording in legislation\(^10\). Having said aforementioned, the theoretical definition of the legal frames control is obvious, in order to restrict the abuse of power in general and control power in particular, which in its turn is essential for development of civil society and country in common. This is to say, that even though young democracies are more vulnerable, on the other hand it is easier to develop proper legislation in that countries, since stereotypes formed in transitional period are easier to be changed. Concludingly, as any other power vested in government, control power needed to be limited too, into the scope defined by the law. This does not only relates to the control exercised by government on the market, individual life, privacy, borders e.t.c, this also means that as definite the legislation on control is, accordingly more effective will be implementation of those laws and more perceptible and predictable results will come out. The continuity of control in management circle is assurance of long term objectives to be fulfilled. Since many of the findings during control activities are becoming visible some time later. Thus, in order to establish an effective government control system and exercise the control powers over public activities vested by laws, government should first set up an effective control system

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\(^8\) INTOSAI-The International Organisation of Supreme Audit Institutions, EUROSAI- European Organisation of Supreme Audit Institutions, ASOSAI-Asian Organisation of Supreme Audit Institutions.

\(^9\) For example in Philippines, while vesting many control powers in the President, section 4 of the Article 10 of Filipino Constitution clearly defines that Filipino president has no control over local government, he/she just exercises general supervision on it. For more details on this see article by Patas Pinoy [http://bataspinoy.wordpress.com/2011/04/05/president-has-the-power-of-supervision-not-control-over-local-government-units-lgus/](http://bataspinoy.wordpress.com/2011/04/05/president-has-the-power-of-supervision-not-control-over-local-government-units-lgus/)

within its own structure and agencies, on this end government control should at first be commenced from the institutions and mechanisms set up in the governmental establishments. This is to say, that if the public institutions are bypassing legal regulations, the private sector will closely resemble those practices. So the strictly regulated activities of government institutions and their operations are key factors for success in meeting its objectives and spreading the effectiveness of its own operations on the private sector. The control is exercised by all government institutions, depending on the sphere of their operation and form of activity. Theorising abovementioned concludes, that control power has to be exercised by the government in a strictly regulated way and legal restriction has to apply on every action accordingly, in order to assure legally competent, transparent and responsible government. In this regard, government control could be considered as restriction of the power within the government by both civil society and government agencies'. On international level similar inner control mechanisms should be established, in order to assure equal rules for international stakeholders.

During recent decades an influence of multinational and national corporations to the all level governments have been significantly ascended. In different countries this process has been negatively affected to the monopolization of market, environmental issues and issues alike. In the worst cases, governments acted in favor of such corporations, harming interests of their own nation, even changing the legislation to fit certain interests. The analysis of this issue leads to an idea, that, if the pure control power is vested in any of the three commonly known branches it’s more likely to serve the interests of the governing regime or party, and in most of the cases the governing group holds a majority of votes in decision making process. Thus, an independent control over governmental operations implemented by the power holder designed for controlling purpose only is essential for the country and future generations to come. In opposition to this thesis one would argue, that if other branches of government are construed and acting in a favor of ruling group(s), what would be an obstacle to gain power on the theoretical “control branch”. The are several reasons to believe that the power should be handed over this branch as well. First, executive and legislative branches are pure political and any oversight undertaken by them directly, is more likely to be considered and in fact done within political aspect and motivation. Meanwhile, establishing independent oversight is beneficial for all political parties. Similar to Judicial branch, this “Control” branch is also to be formed through political consensus by politicians, with guarantees of independence and sufficient funding for its operations. Efficiency and independence of any activity or operation is in big part build on source and ways of funding of any agency. If funding of overseeing agency is given on the
pleasure of executive branch, it’s more likely to be governed by the executive branch and its objectives of independent control will never be met. While direct funding minimizes involvement of the executive branch, whose activities are the main object to be controlled. If this thesis is backed by well trained professionals aimed at conducting different types and level of control activities, it will make sense on the overall performance of the government, restricting it to act in a strictly defined legal scopes. For example, a clause in the Budget and Accountability act of 1921\textsuperscript{11}, passed by Sixty-seventh Congress, has some sort of guarantee for the Independence of Congress and Supreme court, since its second title prescribes, that President includes the estimates of budget of Legislative Branch and Supreme Court in his budget proposal, without any revision. Once been passed, during the following decades this clause was developed further creating many other means of separation and independence of Government branches, and discussion on this will be held further.

Since the first democratic movements in Europe and the US, the political and legal thought was focused on the creating the tools on how to control the governmental power and action\textsuperscript{12}. Further, this intention was transferred to the new formed countries including eastern European ones. It is however impossible to imagine any process within the country or on international level without governmental power and authorization to act in a favor of the country and society. In the same time every government may divert from democratic way and become autocratic or dictatorial, acting against the principles, which it is assumed to promote, protect and develop, if the proper control mechanisms of its powers are not set in the Constitution and Laws, likewise if those mechanisms are not properly implemented in reality. Since, the very meaning and role of the Constitution is to restrict and limit namely governmental powers in its wish to interfere the private life of an individual\textsuperscript{13}.

As stated above, control is the element of management or governance, sometimes

\textsuperscript{11} There was no such thing as a federal budget prior to the Budget and Accounting Act of 1921. Federal expenditures were managed by a variety of Congressional committees without a central authority overseeing the spending process. Reform had been debated, but it was continuously rejected to be passed. President William Howard Taft set up the Commission on Economy and Efficiency to learn and develop concept of establishing a federal budget agency. The Commission unveiled its plan in 1911, but it had no success due to the beginning of World War I. In 1920, it almost became a law, when Congress passed a bill, but President Wilson used his veto power, requiring authority to remove Comptroller General, In 1921, Warren Harding became president, and the Budget and Accounting Act, was passed and signed by him.

\textsuperscript{12} According to James Madison, “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions” Federalist #51.

\textsuperscript{13} This is reflected since Magna Carta, which was adopted of 1215, since its role was to limit the royal power,
it’s a last element in the management circle, done by gathering, analyzing and reporting the operational activities of given activity. Each actor of the management circle has a portion of involvement in controlling motion. It may be done as a direct involvement in oversight activity or through routine job responsibilities, not directly involved in gathering or distributing the information. However, Control and Oversight are inalienable parts of management in any sphere of social life starting from sales and industry and ending with government activities, bringing control as core issue in social and public relations. While speaking about Constitutional mechanisms of control at first, it is about institutions and customs and the order they assume to maintain for the public welfare. The separation of powers and vesting them in different branches is also one of those solutions provided by Constitution.

While advocating the idea of power separation, John Locke stated “....that if the laws are made and executed by the same person, most probably the person should exempt himself from obedience, and suit the law to his interests, both in making and executing...”. As the object of the separation of powers he saw control and restriction\textsuperscript{14}. Montesquieu’s vision of this was a bit different, as he saw the society’s participation in the formation of government and cooperation between legislative and executive branches, but for judicial power, he considered strict separation as a necessity, even having “unchecked” Judicial power was acceptable for him\textsuperscript{15}. Inspite of differences in the views, both, Locke and Montesquieu were certain, that it is most likely that self-control could never occur by power-holders, unless mechanisms of it are definite. They saw separation of powers as a tool to prevent abuse of power and secure control over it. At first sight, the existence of different branches may serve as control itself, but in reality, if even one agency notes misconduct in the activities of another without a competence of action and proper mechanisms to do so, there is no chance to effectively exercise such control.

In this regard, it is notable that since those times the main purpose of separation was not to entitle any right to any of the branches/powers, but to put frames or define the scope of authorization to act or operate on the special direction of management in order to ensure proper implementation of the laws. In my view, the term “Right”\textsuperscript{16} may be applicable for the individual persons only\textsuperscript{17} and never for the government agencies. Government

\textsuperscript{16}The term “Right” is positive by its nature, thus it can not be applied in one line with restriction or ban. Although in several cases many rights can be temporarily restricted, but it may only occur in special circumstances for the common good of society.
\textsuperscript{17}The article 42.1 of the Armenian Constitution entitles Human Rights and Freedoms to the legal entities as well.
agencies have responsibilities/obligations/duties to carry out, and to serve, and consequent powers and/or authorization to help them to meet their objectives and comply with those responsibilities. On the other hand, Constitution being the first-hand source of the rights and freedoms, in the same time proposes mechanisms for development, review, amendment, implementation, application, observance and enforcement of the law. All of these powers are vested in the different branches of the government, which Constitution intends to restrict. So the question arises, how can the Constitution act on both sides-limiting the government’s actions in a strict accordance with the law and vest a power to restrict individual to act in accordance to the law. This question brings to the conclusion that the control becomes an important procedure or action for both sides of social relations regulated by the Constitution. In the conflict between those two parts of social relations, it is clear that the winner will be the one, who has developed and implemented more efficient mechanisms of control over the activities of another. It is believed that, the main tool for the people to exercise its control is through elections. The other tools may vary from right to assembly or form associations, which can conclude in forming NGOs and political parties, to the appeals or requests on information regarding the topics of public or individual interests. However, the openness and transparency of the government activities is key to success in overseeing those activities. All of these elements of public control, in the event of proper implementation may force the government to act in a favor of governed, despite the fact, that government’s main role is to do so, without any forcibility. If in the developed democracies this is not a big issue, in the post-soviet (young democracies) countries the actions of the government are always becoming subject for a dispute among social groups, as those actions in many cases, seems to be backed by the interests of economically sustainable certain groups, organizations or persons. However, the fact is that people’s capability to control the governmental actions is more successful not in the cases of taking action, but in cases of surveillance over those actions. In this regard, the government has an advantage in this social relations, as it holds the power to enforce the law, adopted by its institutions. If implementation of the law is enabled to both sides of social relations, enforcing is an exclusive authority of government. Thus, the role of judicial branch becomes crucial in implementing and preserving democratic values, as the court has the power to make a decision on the legality and rightfulness of the action of either side. Many of the issues, which arise out of this topic are about the actions of bureaucracy and legitimacy of

"The fundamental human and civil rights and freedoms shall apply to legal persons to the extent these fundamental rights and freedoms are applicable to them".

18 These tools are far from being a full toolkit of the control capabilities.

19 This situation is more obvious when keeping track of environmental laws implementation, or selling state assets to the corporations or tycoons.
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its actions, bringing many of them to the floor of public discussion. Thus, the theme of control is both political and legal (constitutional issue), which is applicable to all the aspects of the social relations. It is political, because politics decides the mechanisms of control and hold the top offices of enforcing the law and it is a legal matter, because all their decisions on implementing the control are required to push through the laws and legislative process. The comprehensiveness of the Constitution is however one of the most important roles it has. Here it’s noteworthy, that the basics of the controlling process are laid down in the Constitution, in both regards political and legal. Constitution provides the principal mechanisms of forming all of the branches, rules how they should act and to what extent, when and how certain rights and freedoms can be restricted, what cases can be subject to judicial review and what kind of legislation shall be passed by each branch. Providing all of this principles also contains limitations, i.e. controlling each issue to certain extent. This sometimes not only for internal use, but also may defend the sovereignty of the country from possible intervention of International law and organizations. The globalization of the world and treaties signed in this regard, somehow conclude in less sovereignty to make a decision on some key issues, because many of the laws and statutes may not comply to requirements of those treaties. However, this situation one strengthens and justifies a role of judicial branch, which is the one authorized to interpret a law and Constitution. Besides, binding treaties have to be passed by the parliaments. In addition to this, in countries with continental legal system, before bringing the treaties to parliament floors the Constitutional Courts examine their compliance to the country’s constitution. This procedure seems essential in a process of assuring sovereignty of the country, in the same time highlights oversight power of Court in comparison with other branches of the government. This also contributes to the operation of the system of checks and balances on both national and international level.

The law in general, and Constitution in its role of Supreme Law in particular, are the important methods of control, e.g. power. As discussed above the main principle of having control over the governmental powers is proper separation of powers in branches, in accordance with the Constitution and laws. The implementation of this, assumes having normative Constitution, instead of symbolic one. The normative Constitution, implies the branches of the government to be interdependent and sets up a system of control among each other. If the normative Constitution exists, it is almost unable to the develop a “contra

20 In many Constitutions there is a clause proclaiming that no international treaty can be ratified if it contradicts with the Constitution. This case is well discussed after the Armenia’s president statement on joining Customs Union leaded by Russia on September 3 2013. In my point of view this treaty has to be overruled, if brought to the Constitutional Court, because it the Armenian Proclamation of Independence, which is base for Constitution, clearly prescribed that Armenia shall have independent Tax and Customs agencies.
legem fundamentalem” a legislation, which is developed bypassing Constitutional requirements. However, many of the post-soviet countries have such a Constitutions, which allows branches of the government to produce a legislation contradicting with Constitution\textsuperscript{21}. This trend has been practiced for more than a decade enabling many laws to contradict with each other, and even having bylaws in contradiction with Constitution and Laws. This is not about constitutional flexibility and going in a line with growing political, legal and social inquiries. On the contrary, this becomes very dangerous scenario for usurpation of the power delegated to the other branches and power given to the people itself. In such kind of Constitutions, every branch of the Government finds itself acting under the rule of executive branch. In that system of constitutional reality other branches may feel very comfortable. On the one hand, its informal, but factual dependence and operation under executive branch seems to be the most appropriate for the individuals, who hold offices in the other branches, but on the other hand, on the institutional level it leads to the disastrous consequences for the democracy and country. The challenge in this situation, is to form a system of effective oversight over the implementation of the laws, which can be under control of the other institutions such as NGOs, social groups, and respective agencies or branches that don’t rely on the office holders will. However, the human factor and competences play a big role in this circle of checks and balances. This issue requires new approaches and sometimes crucial decision to overcome the difficulties.

Traditionally, many democratically designed Constitutions designate three branches of the Government and split them into Legislative, Executive and Judicial. The purpose of this is that not to have one actor exercising all the mentioned powers. The basic objective of separation is to have control on the possibility of excessive power and consequent usurpative intentions of governors. So it is assumed, that these branches should oversight each other’s activities, in order to ensure proper governance within the competences of each branch defined by the law. According, to U.W. Saxer, the constitutional equilibrium consists of four constitutionalized relations of control, which can be distinguished: control by state authorities; control of state authorities; control among state authorities; and control between individuals. However, in my perspective there is one more branch of the government power, which currently exist in many countries but it’s not formally recognized or considered as a separate one. This branch of the Government is the Controlling branch. Despite the fact, that all of the traditionally recognized branches exercise controlling power and this power is part of their toolkit, none of these branches has control as a main

\textsuperscript{21} This situation is not only the fail of constitutional mechanisms, but also a lack of respective control over the implementation of the constitutional clauses. Sometimes, constitution creates organs to defend its clauses, but fails to vest enough power into those organs to do act so.
delegation or objective in its activities. Further in this article there will be discussion on the existing Control institutions in the IS, which can be considered as Control power, though formally vested in traditional branches of the government, as well as some practical aspects of independence and effectiveness will be presented.

In some countries the Supreme Controlling agency works under the Parliament and acts as watchdog of the Parliament. In my view, the main principle of the Control power concludes in having depoliticized decision making process and decisions itself, this assumes control power alike judicial one. In many of young democracies, such as Post Soviet countries the parliaments are considered and act in role of “rubber-stamp”, clarified by Gordon Smith as that “process of legislations may seem to be a surviving piece symbolic ritualism”. In this kind of countries all other branches are governed by the executive branch headed by the president, even though prime-minister is formally considered to be head of executive branch. Whereas, in many countries President on its behalf exercises both legislative and executive powers with big influence on judicial power. Separation among branches itself, assumes limitation of power of each branch by another one. But in many relatively young countries, alike in US, President is entitled to sign the laws adopted by the legislature, appoint executive branch top officials and judges, without even a consent of the legislature. This brings to the conclusion that in many countries, including Armenia, the president is the one to be vested the most of power of both branches, as by signing, promulgating or vetoing laws he impacts on legislative and executive process and branches itself. For example in Armenian, presidential orders and decrees, which in their legal status are higher than any one document, they come right after the laws, for other branches in implementing their powers. This is to say, that formally in Armenia presidential orders theoretically are binding for legislative and judicial branches and their officers, because the legislation doesn’t prescribe opposite. It is even not clear, to what branch of the government President relates. However in the US, it turns in the dramatically other way, as presidential executive orders are not binding for the agencies which are establishments within judicial and legislative branches. In this regard, it becomes very challenging to outline, whether a vital system of checks and balances aimed at controlling a power abuse by executive branch, can still can be entrusted to the parliament?

Although, all the branches of the government alike constitutional articles, are interdependent, each of them is entitled by the unique power, and shall be the main holder

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22 As the exceptions to this the Decisions of the Constitutional Court and Decisions of National Assembly are higher than presidential orders. Constitutional Courts decisions may even overrule the laws or certain parts of them. See Article 100 of the Armenian Constitution. However the powers of Constitutional Court are also question for the further discussion.
of the delegated authority. This allegedly should ensure the sovereignty of each branch and proper functioning of the checks and balances system among the government branches. Further clarification of this issue requires multi-shaped approach on the ways implementation and clear mechanisms should be put in the law, in order to secure effectiveness of the process.

The number of actors in this circle of management may depend on the form of the governance of the given country, but in general the objectives and powers of different branches are almost the same in every country. When it comes to government control, in any country certain amount of friction is provided by legislation itself. The inevitable disputes arising among branches of government are signs of democratic processes in the society. In fact after any dispute is resolved one of the sides becomes dominant and the other subordinate in philosophy of decision, no matter it is administrative or judicial one. However, in this process an important thing is not to have any of the branches constantly dominating. Constant domination of any of the branches, will concludes in dysfunctionality of the checks and balances and the government in general. Having an example of US Government Shutdown in 2013, one can think that this went far beyond of Constitutionalism as it threatens the country’s image and may leads to disastrous consequences, on the other hand it showed up an existence of the vital mechanisms of checks and balances, defined by US constitution. Speaking about checks and balances in the US, it’s noteworthy to mention that although the Constitution has a history of more than 200 years, the mechanisms of control prescribed by the constitution are still vital and assuring the balance among government branches in the US. Comparing US and post Soviet Countries’ Constitutions, one may conclude that during historical, political and legal developments of the government control in the US, it has proved its role as a guarantor of separation of powers. An arguable opinion will be the one stating that any of the branches in the US government is exercising more power than the other one, including “fourth” control branch power. Even Government’s shutdown is the proof of vitality of the system checks and balance in the US.

A series of “weak” presidents followed by Andrew Johnson throughout the remainder of the 19th century allowing Senate to become strongest branch of the government. But this situation has been changed in the beginning of 20th century with presidencies of Theodore Roosevelt and Woodrow Wilson, who challenged the senators and the balance for some time shifted to the White House. However, this is continuing process which is changing from time to time, depending mainly on the Congress’s majority party will. As the most recent example the ease of Filibuster rule for presidential nominees
appointments can be mentioned\textsuperscript{23}. In this particular case of Senate procedures, steps undertaken by current majority and minority groups to control each other actions are politically motivated, as Republicans argue that in the same manner Democrats frequently blocked President George W. Bush’s judicial nominees\textsuperscript{24}.

As for Armenia, since the establishment of presidency in 1991, it has developed in way of President centered government and opposition has never had a chance to exercise real control or become majority in parliament. There was no any case, when the Presidential nominee has a trouble to be confirmed by the parliament majority. However, this situation is common in almost all post Soviet area, with some minor exceptions of Ukraine and Georgia. In this regard it is noteworthy to mention that even in a strong presidential centered country, which is Russian Federation, in late 1998 was a case, when Parliament two times rejected the candidacy of the prime-minister nominated by the president Yeltsin\textsuperscript{25}.

Constitutional amendments undertaken in Armenia in 2005, were declared as limiting presidential power and shifting the power of parliament and executive branch\textsuperscript{26}. For example before 2005 all the government (executive branch) decisions\textsuperscript{27} should have been approved by the president only after that enacted, even the sessions of the executive branch should have been held by prime-minister only upon assignment of the president. This clause has been changed aimed at giving to the executive branch more independence. Currently prime minister is the only officer to sign cabinet decisions. However, President is given the authority to suspend the enactment of cabinet decision for one months and seek review at Constitutional Court. This has never happen, because in fact there is no need for the President to do so, since the Constitution authorizes president to establish procedure of organization and operation of the cabinet\textsuperscript{28}, which factually allows prevention of any decision to be adopted cabinet without prior consent of the President.

The structure of Control powers vested in different branches is complex, and despite

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\textsuperscript{23} A resolution to limit certain uses of the filibuster in the Senate to improve the legislative process. [http://beta.congress.gov/bill/113th-congress/senate-resolution/4?q={%22search%22%3A[%22+Filibuster+rule%22]}]
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\textsuperscript{24} On December 10 2013, Senate to confirmed Patricia Miller’s appointment to become a judge on U.S. Court of Appeals for the District of Columbia Circuit. Republicans were blocking her nomination since October 2013 using 60 vote requirement, this triggered Democrats to force changes in procedures for Filibuster rule. This nomination is seen very important to both sides, because of the powerfulness of the Court, as it rules on White House and Federal agencies actions. This appointment will change the partisan balance to benefit of Democrats as currently 4 judges are appointed by Democratic presidents and other four by Republicans.
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\textsuperscript{25} Coverage on rejection of the nominee for Russian PM by BBC-[http://news.bbc.co.uk/2/hi/europe/167500.stm]
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\textsuperscript{26} By the Armenian Constitution President is not considered as the head of executive branch, instead he/she is considered as a head of State.
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\textsuperscript{27} “The Government of the Republic of Armenia shall adopt decisions only within the powers conferred upon him by the Constitution and laws of the Republic of Armenia”, section 1 article 14 of the “Law on Legal acts”
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\textsuperscript{28} Article 58 of the Armenian Constitution “The procedure for the organization of operations of the Government and other public administration bodies under the Government shall upon the submission of the Prime Minister be defined by the decree of the President of the Republic”.
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of interrelatedness of all the branches and their powers the main goal of separation is assurance of balanced governance of the country by all the branches.

Among many other solutions put in the US Constitution on this issue, there is one distinct, which is the Congressional “power of purse”\textsuperscript{29}. This power authorizes congress\textsuperscript{30} to appropriate funds and prescribe governing or use of those funds, including laying and collecting taxes, paying debts and borrowing money, etc\textsuperscript{31}. Consideration of these clauses of the US Constitution in a line with consent for the officials’ appointments, brings to the conclusion that the congress\textsuperscript{32} is vested the highest power of control in government relations. This could be viewed as Congress possession of two main function- to legislate (pass the laws) and conduct oversight on the execution of those laws. However, this is not that absolute power, since the existence of the Judicial branch also limits the powers of both Congress and the President, in the same time balancing them. Analyzing further developed legislation on oversight by the Congress it may seem that Judiciary system is for some sense out of any oversight by the Congress after funds are appropriated\textsuperscript{33}. This is however is true only for Supreme Court as 31 U.S.C. 701 (1) exempts Supreme Court of GAO’s mandate. Besides, several statutory requirements put the Judicial branch programs under oversight of GAO. Moreover, 31 U.S.C. subchapter 7 or any of its provisions does not restrain GAO from overseeing Judicial branch operations\textsuperscript{34}. Recent practice even shows that GAO has more involving in its oversight over Judicial branch activities\textsuperscript{35}.

The Supreme Court of the United States played a unique role in nation’s history and development, continuing to act so as a balancing scale between executive and legislative branches. The Supreme Court powers defined by the Constitution and fair implementation of those clauses have had a big impact on legal theory and practice. However, there are

\textsuperscript{29} Cl. 7, sec.9 Article 1, declares the “power of Purse” while prescribing “No money shall be drawn from the Treasury, but in consequence of appropriations made by law”. This one sentence makes all the agencies dependent on the Congress.

\textsuperscript{30} The supremacy of parliament may be backed to Glorious Revolution of 1688. From this point, gradually the oversight function of the Parliament over the public money and budgeting has begun. .

\textsuperscript{31} Article 1, section 8 of the US Constitution.

\textsuperscript{32} The uniqueness of the US experience is in this case that unlike the federal budget, which can have deficit, almost all the states (except Vermont) have constitutionally or statutory requirement to have balanced budget. For more details see- http://www.ncsl.org/research/fiscal-policy/state-balanced-budget-requirements.aspx

\textsuperscript{33} This issue is very important, since the budget of Federal Judiciary is multibillion, more precisely for the FY of 2014 Congress was asked to appropriate about $ 7 billion to Federal Judiciary system. There could be opinion that this is done, in order to assure the full independence of Judiciary branch. On the other hand Constitutionally Congress has the power to oversee the appropriations, so this situation in case of occurring will contradict with Constitutional requirement. Since no any Constitutional clause exempts Judiciary administrative and financial activities from Congressional oversight.

\textsuperscript{34} Public Law 96-191, Public Law 97-258, Public Law 108-271

more than 200 of its decisions, which have been overruled by subsequent decisions. In my understanding overruling of the previous decisions is not because incompetency or unjustified practices of made opinions, but because of the development of demands of the public and interpretation of the law in certain timeframes. This is also proved by a recent ruling made by U.S. District Court judge on Constitutionality of NSA practice of collecting telephone data. This one ruling is the first after 15 opposite decisions. The unique power of the courts to interpret the law is about to interpret that law for the certain circumstances aimed at public welfare, since the US legal system is in a huge portion based on the precedents and rulemaking power vested in the courts of US and Supreme Court in particular is regarded as a final word and inalienable justice. On this, anyone who has been affected by particular case reviewed by a court, may insist the his/her case unique of others, when the same law enforced. There are several landmark examples throughout the history, when Supreme Court decisions have been crucial in balancing the power between branches. All of these cases are worth to be analyzed, but some of the most important in the frames of this studies is concerning presidential removal power. Regarding this, one of the most controversial issues of its time was the President’s power to remove officials from office without consent of senate. This was seen as a main control tool on executive branch exercised by both Congress and the President. The dispute over this issue led to the passing of “Tenure of Office Act of 1867”, which president Johnson vetoed, and subsequently the impeachment process has started against him, where he was acquitted by just one vote. This issue was long on the floor, from time to time being risen. During early Grant administration the law was virtually repealed and entirely repealed in 1887. However, first definite ruling on this issue by Supreme Court was made in 1926 on the case “Myers v. United States”, when decision gave the Presidents the authority to remove not only the immediate subordinate officers, but also members of independent regulatory commissions. Later in 1933 President Franklin Roosevelt removed William Humphrey, then a member of Federal Trade Commission. The Supreme Court in its decision concerning the case Humphrey’s Executor v. US tried to distinct the “executive” and “administrative” functions, defining that if the “executive officer” can be removed by the president’s discretion, because he/she serves for president’s pleasure the officer serving at quasi-legislative and quasi-judicial officers can not be removed by President without a consent of

37 See the article on Washington Post on U.S. District Judge Richard J. Leon ruling that NSA’s collecting of phone records is probably unconstitutional. http://www.washingtonpost.com/national/judge-nsas-collecting-of-phone-records-is-likely-unconstitutional/2013/12/16/6e098eda-6688-11e3-a0b9-249bbb34602c_story.html
senate. This decision was regarded as limitation of presidential removal power in general, except the purely executive officers who were appointed by president directly without involvement of senate. In 1958 in its decision on Wiener v. US the Supreme Court ruled that President may not remove officials, who are engaged in adjunctive functions for pure political reasons. Last Supreme Court holding on this issue was decision on the case Morrison v. Oslon, where court supported provisions of Ethics in Government Act, regulating independent counsel, which had authorization to investigate or prosecute high-level executive officers, including President.

The topic of removal and appointment of high ranked officials is very important and is seen as one of the main instruments in the toolkit of control for either executive and legislative branches. In further sections of this article a discussion and analysis will be given on the complex regulation of government control institutions, such as Government Accountability Office and Inspector Generals. The statutory procedures of appointment and removal from the office, as well as procedural mechanisms defined by law, plays an essential role in defining the independence of the high officials of those institutions. That is to say, the theory proposed in this article on of independence of the “Control branch” is also justified by the procedure of appointment and removal. The Legislature in many countries, while establishing those institutions, foresaw the importance of matter of removal, thus founded the tough procedure for that action. However, procedures of removals may be exercised in a proper and legitimate manner if the elected representative are accountable to the electorate, since the main obstacle of removing heads of those institutions is legislature.

The US Constitution does not explicitly provide the institutions, which execute the control function. However it sets up the normative grounds for those institutions to be established and act for the pleasure of the nation, but not any of the Constitutionally designated branches.

On the constitutional level there is a variety of control mechanisms distributed among different actors of Constitutional relations. The question is whether those mechanisms correspond to the reality and limitation of power? Are the existing (traditional) constitutional theories of control sufficient to face challenges of modern complex relations or do they address the raising needs of the society? Getting comprehensive explanation to this question requires delving into essence of the state objectives and the functions it exercises

39 On 06/29/1988 In a 7-1 decision written by Chief Justice Rehnquist, the Court upheld the constitutionality of the Independent Counsel statute against claims that the office violated various Constitutional clauses that preserved the separation of powers, including the Executive Vesting Clause (Article II, Section I, Clause I) and the Inferior Officers Appointment Clause (Article II, Section 2, Clause 2). The Court found that because the Independent Counsel was subject to “good cause” removal by the Attorney General, the President had some control over the Executive Branch office – and therefore the executive power to prosecute had not been seized by the legislative branch.
to meet the objectives.

The concept of Constitutional culture traditionally is treated as an outlining thread to the main priorities for the state, the path it has chosen to be developed and for some sense Constitution plays a role of the Strategic plan for the Country, which includes its vision and mission. While defining the theory of constitutionalism Lord Bolingbroke stated “By constitution we mean, whenever we speak with propriety and exactness, that assemblage of laws, institutions and customs, derived from certain fixed principles of reason, directed to certain fixed objects of public good, that compose the general system according to which the community have agreed to be governed”\(^40\). Thus, control mechanisms set up in the constitution are aimed at sustaining public order, welfare, security and prosperity. For reaching these objectives Constitution arranges functions to be exercised by government, in the same time it founds the mechanisms of prevention of possible abuse of power. In the age of advance technological use it is very easy for the government to be engaged in directing the society, using all the media and social interaction toolkit it possesses. Because of this, state executive agencies have become fulfilled not only with executive function but also in policy making issue. One would argue the legitimacy of this, but in reality it is not that bad to assign the practitioners to make a proposals on amendments on the regulations or laws they are working with. However, the function of decision making on policy to implement has to be in other branch. Here is where the need of control on the proper implementation and execution of the assigned functions becomes actual, and I would argue that current constitutional mechanisms of oversight do not assure proper implementation of constitutional ideas. So the question arises on whether the new theory of control on constitutional level should be developed or control should be abstracted from other constitutional powers? As it was said above, current technological advancement plays its big role in affecting the public opinion and its impact to government actions concerning every issue. Notwithstanding to this, because of technological advancement government is forced to share some of its power with other actors, such as NGOs, corporations, trade unions, which in fact became more involved in decision making process. But this doesn't mean that government has lost its role as decision maker. On the contrary, this means positive signs of development of civil society, as democracy assumes broader involvement of people in public management. Gradually, this becomes a norm, sometimes unwritten, since power is not distinctively shared among branches recognized defined in the Constitution or government agencies. Noteworthy to mention that this circle of decision making becomes more engaged and cooperating, consequently ensuring dialogue among

\(^{40}\) Charles Howard McIlwain, Constitutionalism; Ancient and Modern 3 (1947).
actors and creating checks and balances, not within the branches of the government but also with involvement of civil society and its actors. This observation relates to almost any aspect of government activity, except the one which deals with classified information. Undoubtedly, in order to maintain public security and order, government has to keep some information out of public sight. It is assumed that this information is not to have obligatory clauses for individuals, is created to regulate internal operations of respective government agencies and compiles rules of behavior only for the officers who serve in those agencies. However, public oversight involvement is necessary even in such cases, but this type of involvement requires attention on the content on which could become classified information. Otherwise government may go beyond, in its will to classify as much information as possible, even if the information is not related to national security. Having majority in parliament it becomes very easy to maintain any lawmaking initiative for the pleasure of the executive branch. For example, travel expenses of the US president are available to the public, and even being criticized nobody initiated classification of such information. On the contrary to this, recent scandal in Armenia concerning travels expenses of high officials, ended up initiation from the executive branch to make changes in several laws, in order to consider this kind of information classified. This particular case shows how vulnerable and inefficient are the control mechanisms in Armenia, and civil society’s inability to prevent such government actions. This initiative’s official justification was to assure the security of country leaders, in reality the amendments in respective laws to classify this information is pleasing every stakeholder in decision making process. The laws to be changed are covering President, chairman of national assembly, prime-minister and all others who have given special protection by the state. Given example shows the “comfortable situation” example, which was theoretically given above. This means, that the only possible tool to control such collective misuse of legislative power is in the hands of civil groups and organizations. This observation also reveals the fact, that the government being vested the power to develop legislation, risks the foundation of democratic society. Since formally it is

41 However in Armenia many legal matters remain out of Constitutional or even contradict with them. Unlike US security council operations regulatory framework 50 U.S.C Section 402 (US National Security Act), Armenian National Security Council is mentioned in the constitution. There are two presidential orders which regulates the activities of the Council. In contradiction with the Article 6 of the Armenian Constitution, which requires all normative to be publicly available, these orders’ annexes consisting charter of the agency are classified. http://www.arlis.am/DocumentView.aspx?DocID=44131

42 May 30, 2013, on page A16 of the New York edition with the headline: Travels of the President Under a Microscope in an Era of Belt Tightening.

43 See article on epress.am about PM spendings on charter flights, published October 10.31.2013.

44 For details see on www.gov.am, government session agenda on 11/21/2013, topic # 31 on making changes in the “Law on Procurement” and “Law on State and Official secret”.

45 According to the “Law on Providing Security for the Persons Under Special State Protection”, Special Protection is provided to the President, Head of National Assembly and Prime Minister. Besides, the President may select the other State Officials to be provided by special protection.
the one to select which information is to be classified, but on the other hand, on the example of this case it shows that power is exercised to decrease government accountability\(^46\). It is noteworthy that the government actors of social relations are more willing to be circuited in a cycle, where information can be kept out of public sight and control, which on its behalf gives the broad opportunity of misdoing. After 9/11 events the existence of “Secret laws” in the US has attracted a huge attention of scholars of politicians. According to Joel Skousen, “Secret law (that is, law that is never published to the public), is attached to public laws so that government officials can present something to the court (in secret) if they ever get caught”\(^47\). Even the existence of in the US “Secret Laws” are commonly accepted, there are many mechanisms, even to oversee this activities in an inner circle of executive branch. One of those mechanisms is vested in the Office of Legal Counsel of Department of Justice, which plays a special role in the system executive branch\(^48\). Christopher Kutz, of UC Berkeley Law School mentioned “We are used to secrecy in government. Secrecy, in the form of confidentiality, protects privacy; secrecy, in the form of anonymity, can protect the candor and integrity of review processes; and secrecy about enforcement practices, as in tax, lets us partially relax into the belief that we are not simply suckers, while those who know the rules of the game can avoid taxes at will. But secret laws, or secret amendments, are nonetheless chilling, for they strike at the foundation of law itself, and of the government’s right to rule\(^49\).

Besides, there are Congress hearings, which mostly are open to public, except reasons stated in Senate\(^50\) and House\(^51\) rules. These hearings are influential tool in the hands Congress members. Historically, Congressional hearings have become, for some sense reports made by both executive officers and legislature to the public, since public through hearings becomes able to assess, what has been done and how each branch of the government exercises or implements its duties to serve the public. Congress has several means to follow conclusion of the hearings, it can prohibit running some particular program, stop appropriations or amend an Act in way to meet its objectives, or request an investigation or audit to be conducted by Government Accountability Office or Inspector General of respective agency (s). However, Congressional powers are not the topic of this

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\(^{46}\) Similar case concerning reasons and grounds on classified information is reviewed by the European Court on Human Rights"CASE OF STOLL v. SWITZERLAND", concluded December 10 2007.


\(^{48}\) According to former OLC head Randolph Moss, “When the views of the Office of Legal Counsel are sought on the question of the legality of a proposed executive branch action, those views are typically treated as conclusive and binding within the executive branch.” Moss, “Executive Branch Legal Interpretation: A Perspective from the Office of Legal Counsel,” 52 Admin. L. Rev. 1303, 1305 (2000)

\(^{49}\) See the article Christopher Kutz “The repugnance of secret law”, at [http://weblaw.usc.edu/centers/clp/papers/documents/Kutz.pdf](http://weblaw.usc.edu/centers/clp/papers/documents/Kutz.pdf).

\(^{50}\) Senate Rule XXVI, paragraph 5(b)

\(^{51}\) See clause (g)(1) under “Open meetings and hearings” section of the House Rules.
study, thus the focus is not the Congressional oversight is not deeply touched.

Formally, in Armenia there are some mechanisms to prevent possible misdoings, such internal and external controlling divisions or institutions, who ex officio have full access even to the classified information. However, in Armenia this makes a little sense, since officers of internal audit (control) divisions\textsuperscript{52} of the government agencies are appointed by heads of the agencies and there is no any chance for them to act against the interests of the agency or its head, even in case of existence of abuse, misdoing or waste of funds, they are more likely to conceal the fact of misdoing, rather than bring it to public sight.

There is one more Constitutional organ- Control chamber\textsuperscript{53,54}. It is constitutionally prescribed that this agency shall act as an independent, from other branches of the government. In fact it was trying to seem independent, but during recent years it happen to be just bringing its reports to parliament floor, and there was almost no any outcome after a vociferous announcements on the misspending and accusations of criminal violations\textsuperscript{55}. Current dysfunctionality of Government control system in Armenia shown by aforementioned example is resembled in every level of state government. Moreover, in spite the fact that Armenian Constitution requires that every government agency or official act has to be authorized by law and Constitution exclusively\textsuperscript{56}, many of controlling bodies operate without not only being regulated by law, but also without even being mentioned in any law\textsuperscript{57}. In fact, in the past decade, by separate laws there were established several inspection agencies/departments, which formally are nested within the ministries. However the most powerful ones still remain unregulated by law. This problematic issue brings the question of legitimacy of the activities and powers exercised by those agencies or bodies,
varying form the level of Presidential staff to simple ministry and local level.

Although it’s not an ideal one, it is worth to investigate and analyze US mechanisms and experience of government control legal procedures and policies, as it has proved its effectiveness throughout ages, in bringing US economy on the first place in the world and being the country, which still attracts the biggest number of immigrants from all over the world. In my understanding the key success of this country is because of the good practices of governance and management, including control practices. The analysis of current legal and practical scopes of Government control takes back to foundations of the US, when on May 5 1778 US Congress approved the nominee of President George Washington Baron von Steuben, to serve as the first Inspector General for the Continental Army. During the Civil War, when war speculations were actively practiced, President Lincoln refounded Inspectors General institution to ensure that troops were receiving adequate quality supplies and equipment. Like many other institutions of US, the controlling relations between government branches and agencies underwent historical path and developed a unique culture, which has a lot of worthy practices to be learned and spreaded further into the legal amendments of other countries.

The US Institutions and agencies of Government Control (Fourth Branch)

The powers assigned by the US Constitution to the President are in most of the cases shared with the Congress and vice-versa. Among those shared powers are making laws, executive appointments and judicial nominations, using armed forces, negotiating treaties and ratification, president has power to oversee a number of executive departments and agencies, but the Congress is one to create them by law and make appropriations for them. While speaking about complexity of Government Control policy and procedures in the US, it is noteworthy to mention the structure of the legal acts and legislative process. Even within bicameral Congress there are balancing mechanisms towards each other between in Senate and House of Representatives. This includes the authority of one chamber to amend a bill initiated or engrossed by another one, so called “amendment exchange”, which guarantees the tough consideration of the bill before passing it and sending to president to be signed into a law. There are several mechanisms on overcoming possible inconsistencies in approaches of House and Senate, the most interesting is setting up a Conference Committee, which gathers members of each chamber and once decision is made the bill is sent to chambers for approval. Once approved by both chambers the bill is sent to President to be signed into law. An interesting approach on this is that If the President vetoes the bill and returns it to the congress, overriding the veto in a chamber
which initiated the bill is sufficient for the bill to become a law. However, the other chamber may upon its decision also may override the veto. After becoming the law it finds its place in the US Code. The existence of codification of laws (US code), ensures avoidance of mismatching in different laws, as each of 51 titles of the US code is distinct but complex construction, which will not let one to end up finding different answer on the same issue. Starting with a title on General Provisions and requirements on legal acts it gradually becomes a detailed reflection of modern Constitution covering all the areas of social relations and life, defining the Presidential and Congressional powers, shifting to education and foreign relations, it embraces any area, which one could think is touching his/her interests or rights.

Having the power of enacting the laws without Presidential approval, and President with no power to dissolve the Congress, like in many other countries, Congress exercises a significant tool to affect on the actions of the executive bureaucracy and directing its actions. Congress appropriates the funds for operating the programs, and complex mechanisms of program implementation, forces Congress to delegate substantial discretionary power to executive branch. It is obvious that being a legislative branch Congress can not fully exercise its oversight or control power, neither the control is direct Constitutional responsibility of Congress. Instead, Constitution provides Congress with authority to establish agencies and departments for exercising powers vested in all branches of government. Due to this, It is considered that in the early 1920s, Congress began to use broader statutory approach, while delegating implementation of the complex authority of program to executive branch, because those operations require flexibility of executive power, and statutory discretion was given, in order to give space for maneuvers in different and contingent situations. Even without statutory prescription an executive bureaucracy being delegated rulemaking authority, gains non formal power to interpret a law. That is why efficiency of the Control mainly depends on its independence from both partisanship and executive agency, where actual control function is exercised. Analyzing the practical, legal and theoretical aspects of GAO and OIG community, one clear idea comes as result, that is an independence of oversight agency is a key factor in assuring efficiency of their activities.

Although Congress has delegated a big portion of its rulemaking authority to executive power, it created laws and regulations enabling its close oversight over executive activities and prevent the executive branch in its actions, which Congress thinks are inappropriate in regard of statutes. This is done by several ways, the most effective of

58 Section 8 of the 1st Article does not list Control or Oversight function as to be exercised directly by the Congress.
which is amending the laws. The Legislative Reorganization Act of 1946⁵⁹ signed into law by President Truman, required Congressional committees to oversee the activities of the agencies they created or which fall under certain committee’s jurisdiction. Later, Legislative Reorganization Act of 1970⁶⁰ has broaden congressional oversight capabilities by providing committees with more staff and funds for controlling federal programs implementation. If one tries to outline two major steps of established of current Government Control system in the US, he/she can define two major steps were undertaken right after the ending of both World Wars. This happened, because after those wars US economy needed more oversight on public funds and practice has proved rightfulness of the historic times, when decisions were made. In reality the whole idea of current control system came from public pressure to deeply scrutinize the spending of executive branch after a nations economy was in trouble. Amending legislation is constant process, and throughout the political history one may observe ascend and descend of Congressional influence. During the Vietnam war, when public opinion was split apart over that, the conflict between executive and legislative branch reached its top. President Nixon’s refusal to disburse appropriated funds through executive power impoundment, because Congress found that those appropriations are not in a line with previously set policies, has triggered to passing Congressional Budget and Impoundment Control Act and creation of Congressional Budget office (CBO)⁶¹. Although President vetoed the act Congress voted and overrode presidential veto ⁶². This organization became a tool for Congress to assess impact of Presidential budget proposals through independent “reestimation”, making budget projections and economic forecast. CBO produces a reference volume examining options for reducing budget deficits. The volume includes a wide range of options, derived from many sources, for reducing spending and increasing revenues. For each option, the volume presents an estimate of its effects on

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⁵⁹ Aug. 2, 1946, ch. 753, 60 Stat. 812
⁶⁰ Public Law 91-510, 84 Stat. 1140
⁶¹ See website of Congressional Budget Office: www.cbo.gov
⁶² Jeremy Byellin, a Thomson Reuters analyst, on this concludes that However, budget disputes between the two branches of government are, sadly, nothing new.
⁶² Despite the gravity of the consequences of the more recent budget battles (default, sequestration, etc), they won’t leave as much of a lasting effect as the budget battles in the early 1970s. Those fights between President Nixon and the Democratically-controlled Congress are ideologically inversed from the fights we see today: Congress passed a budget, a significant portion of which Nixon opposed because of fears of the budget deficit. Nixon proceeded to invoke a presidential power called “impoundment,” a budgeting procedure that had been used by every president since John Adams. Impoundment allowed the president to prevent any agency in the Executive Branch from spending any or all of the money appropriated for its use by Congress. This was done by an executive order that would bar the Treasury from transferring the funds to the particular agency’s account (this could be accomplished because of a loophole in the Constitution: although the Constitution requires that all money spent by the Treasury must be done by a specific congressional appropriation, it does not require that all the money held by the Treasury has to be spent. Although, as mentioned earlier, all previous U.S. presidents used impoundment, Nixon invoked this power to a much greater extent – impounding nearly $12 billion of congressional appropriations in one year. This greatly ired Congress, which was already upset with the Nixon White House because of the Watergate scandal. Congress decided to take action, and the Congressional Budget and Impoundment Control Act of 1974 agency was born.
the budget and a discussion of its pros and cons but makes no recommendations. In addition, CBO produces numerous reports (discussed below) that examine policy options for specific federal programs and aspects of the tax code. Later the toolkit of CBO was added by Balanced Budget and Emergency Deficit control act of 1985, which was amended in 2011 as Budget Control Act. CBO is engagement is not limited only on federal level, since it also produces reports for the Congress on the appropriations given by federal government to state, local and tribal governments (private entities). One of the recent products of CBO is a cost Estimate Bipartisan Budget Act of 2013, which prevented repeating of Government Shutdown. Researching the legal framework and practical activities of CBO, brings to the conclusion, that it's only purpose is to provide an analysis and it doesn’t exercise real power of control and could not be considered as a part of “controlling branch”, as well as its main focus is on the pure financial and economical issues.

Current system of Government control and “Fourth branch of the Government” in the US, was created exactly in early 1920s, particularly by passing Budget and Accountability act of 1921, which transferred auditing, accountability and claims functions from Treasury department to the newly established General Accountability Office, clearly separating the oversight and control function from executive branch to the brand new independent agency. Although formally considered as the agency within legislative branch, analysis of establishment of this agency brings to the conclusion that it was as a deal between Congress and President, because a powerful tool was being deprived of the use of Presidency and executive branch in general. In an excess of many functions exercised by Comptroller of the Treasury, the agency was given a power to be furnished by all departments and establishments any record of any book or documents. The power given by this act to GAO was going far beyond the practices exercised by “de jure” predecessor at Treasury Department, whose main focus was oversigning financial accounts. The thesis of this GAO to be the first agency in modern US history of “fourth branch” is grounded with a fact that no clause in the in the Budget and Accountability act of 1921 prescribes GAO to be a part of Legislative branch. The whole idea of deal between legislative and executive branches in establishing GAO, in my understanding, is that both sides agreed that an independence of the agency could be guaranteed only when “de facto” is out of influence of

63 More details on CBO products can be found at http://www.cbo.gov/about/our-products
66 More information on CBO reports on state, local, tribal governments and private entities is available at http://www.cbo.gov/topics/state-and-local-governments
68 Public Law No. 67-13, 42 Stat. 20 June 10 1921.
both branches. The only formal reminder of GAO as a part of Legislative branch is the US Capitol indication on GAO's seal. The main reason it's not formally recognized as a “fourth branch” is that Founding Fathers, outlined only three branches of the Government while drafting the Constitution. However, some scholars do not regard to “Control branch” as a “fourth branch”, but they view an existence of Civil Service in the government agencies as an insulated from politics effective “fourth branch”\(^6\). Further legislation amendments clarified or expanded GAO's role, but the Budget and Accounting Act continues to serve as the basis for its operations.

Despite the fact, that most of the processes within the federal agencies and decisions made are politically motivated, as discussed earlier in this article the US was able to create an Independent system of Government Control, consisting of both, separate federal agency, and similar institutions operating in every department or agency of federal level having dual reporting requirement, but in fact out any direct impact from the institutions they report to. Existence of these institutions is assuring the implementation of the system of checks and balances set up in the Constitution, even though none of those institutions is directly mentioned in the Constitution. This is to say, that effectiveness of control and constitutionality of institutional' activities do not depend exclusively on being established by the Constitution either by law. Since the “fourth” (control) branch is not formally recognized, its formal mission in case of GAO is to serve the Congress, and in case of IG community is to keep head of the agency and Congress fully and currently informed. In this section further discussion on this will be held on the activities and legal framework of the US Government Accountability Office and Inspector General Offices, which act as external control system, being factually located within the Federal Agencies and Departments\(^7\).

As discussed above GAO was created by the law, to comply with the Constitution, however since its creation it was not given an authority to impose the sanctions on any agency it has audited or to enforce its legal decisions. One would argue, that in this case the efficiency of the GAO outcome operational activities is very low, since it's banned to be engaged in operations of agencies and thus cannot enforce its decisions. Thereof, to my perspective the incapability of imposing sanctions is one of the strength differences which distincts GAO from other branches and agencies of government, as well as assures its independence. Historical development of GAO shows that at first it was created to oversee

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\(^7\) It is noteworthy to mention, that even though section 4 of the Article 4 prescribes Republican form of Governance for every state and there is no any binding document on federal level, they mostly resemble the Federal Government Structure in regard of Government Control agencies.
just financial operations of the government, since section 312 Budget and Accountability act of 1921, required Comptroller General to report only on the issues on disbursement of public funds. Further the the authorization of GAO was broaden and its reports include performance audit on efficiency and results of programs. In comparison with Supreme Audit Institutions in other countries this seems as a uniqueness of GAO’s role. However, there are many other effective tools of following up GAO’s decisions and recommendations. The most influential of which to push them through legislative branch, this is an advantage of its formal affiliation with legislative branch. In recent years’ track of records and debates on GAO at Congress shows that, Congress seems to give more authorization to Comptroller General71 and treat as a separate autonomous entity. This conclusion derives from the last vote on the amendment to the Government Accountability Office Improvement Act, initiated by congressmen Issa Darrell, his proposal. has no any against vote while 408 of the Representatives supported the bill72.

GAO’s work provides basis for Congressional hearings and further legislative proposals. As discussed above, in the Constitutionally prescribed separation of powers among three traditional branches GAO could be given a unique role, which is distinct as it’s main purpose is conducting pure control activities. Despite the fact that Supreme Court and federal courts established by Congress are charged with power to interpret a law, practically executive power, in its everyday operational activities, while applying or executing the laws factually interprets them. Thus the role of the GAO in controlling executive branch becomes more important, since not that many cases of are brought for the consideration of the High Court.

GAO being created by law has a statutory authority to obtain any information necessary for conducting its activities. In general GAO’s authorities may be concluding as following73;

- Auditing Federal agencies’ operations to determine, whether federal federal funds

71 Following excerpt from US code shows that GAO is considered a Separate Branch not the one which is acting under the Congres, according to 31 USC 3524: The Comptroller General may audit expenditures, accounted for only on the approval, authorization, or certificate of the President or an official of an executive agency, to decide if the expenditure was authorized by law and made. Records and related information shall be made available to the Comptroller General in conducting the audit. (2) The Comptroller General may release the results of the audit or disclose related information only to the President or head of the agency, or, if there is an unresolved discrepancy, to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the committees of Congress having legislative or appropriation oversight of the expenditure. Before December 1 of each year, the Director of the Office of Management and Budget shall submit a report listing each account that may be subject to this section to the Committees on the Budget and Appropriations of both Houses of Congress, the Committee on Governmental Affairs, and to the Committee on Government Operations, and to the Comptroller General.

72 For more information see Congressional records at http://beta.congress.gov/bill/113th/house-bill/1162?q={%22search%22:[%22Government%20accountability%20office%22]}

73 The Auditing Value From the Perspective of SAI, unauthorized to impose sanctions: The Experience by the US GAO. Presentation by Philip Herr, April 18 2012.
were spent efficiently and effectively,

- Reporting on how well government programs and policies are meeting their objectives,
- Performing Policy analysis and outlining options for congressional consideration,
- Issuing legal decisions and opinions on bid protests and appropriations law issues.

Originally GAO officers were able to give opinion for use public funds prior to actual transaction of those funds. Since that time the number of government officers entitled to make a decision on use of fund has grown up, but still GAO exercises is authorization to issue an opinion upon request from federal agency, on whether it is appropriation given for implementation of the program is correctly understood. For some sense, this could be defined as preventive control measure exercised by GAO, thus many of the solutions and opinions are put in the GAO’s various reports, which are published online and accessible.

There are several types of audits conducted by GAO, some of them are statutory, such as auditing the financial statement of entire government, some are upon request of Congress, its committees and members. What is exemplary in this matter, and proof of independence of GAO and Comptroller General, is that according GAO’s Congressional protocols before taking action upon request, GAO has statutory capability of consideration on accepting Congressional requests, this factually gives some discretionary power to GAO. Congressional requests are not expected to be proceeded by GAO, until it formally sends a notification of acceptance to requester. Besides, there is also a solution, which keeps GAO out of partisan political influence, if the congressional request on GAO action is withdrawn and GAO considers that the product of its action has already taken significant resources or it’s attracted public interest, GAO may issue a product as if it were undertaken by Comptroller General’s initiative. Moreover, there are statutes, when Comptroller General is treated in a line Congress’ committees in its overseeing activities and requires Office of

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74 GAO’s Congressional protocols
75 GAO can only undertake work that is within the scope of its authority and competency. In determining whether to accept congressional requests, along with the scope and timing of any related work, a range of factors will be considered, including but not limited to the subject matter of the request; GAO’s statutory audit and access authority, including but not limited to, whether the entity, program, or activity to be evaluated receives federal funds or is carried out under existing federal law; GAO’s professional standards and core values; the amount of resources involved, including any related cost-benefit considerations; the extent of backlog within any applicable GAO team that would be responsible for the work; other work being conducted for the requester(s); whether any related audit or investigation, including a criminal investigation, is ongoing or imminent by another governmental entity including, but not limited to, agency Inspectors General; and whether the matter is pending before administrative or judicial forums.

76 Excerpt from 31 USC 3524 “The Comptroller General may release the results of the audit or disclose related information only to the President or head of the agency, or, if there is an unresolved discrepancy, to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the committees of Congress having legislative or appropriation oversight of the expenditure. (b) Before December 1 of each year, the Director of the Office of Management and Budget shall submit a report listing each account that may be subject to this section to the Committees on the Budget and Appropriations of both Houses of Congress, the Committee on Governmental Affairs, and to the Committee on Government Operations, and to the
Management and Budget of White House to submit a report on each of its accounts. The Congressional mandates\textsuperscript{77} are treated in a different way, because they are more statutory or alike, besides GAO’s policy requires products prepared in response to congressional mandate to be publicly available.

As described above GAO under the USC 31 §3529 also issues legal decision, which are not binding but quite effective tool for oversight activities, and federal agencies are most likely to request a legal decision\textsuperscript{78}, in order to assure agency’s operation in compliance with law. This particular case attracts special interest because in this case we observe interaction and of all the branches of the Government, including alleged “Fourth (controlling) branch”. This story started in May 2002, when the American Council of the Blind (ACB) and two visually impaired individuals filed a complaint in the U.S. District Court for the District of Columbia alleging that the currency of the United States violates the rights of the blind and visually impaired because they could not denominate United States paper currency. In October 2008\textsuperscript{79}, the District Court ruled that the Department of the Treasury must provide meaningful access to U.S. currency for blind and other visually impaired persons in the next currency redesign. In May 2011, Treasury Department approved the methods to be used to provide blind and visually impaired individuals with meaningful access to U.S. currency. One of the measures was Currency Reader Program, which assumed implementing a supplemental currency reader distribution program for blind and visually impaired people. In June 2012, the Senate Committee on Appropriations issued Senate Report a report directed Bureau of Engraving and Printing (BEP) to provide a detailed plan, including a timeline, to develop, design, test, and print currency with accessibility features. The legislation accompanying the Senate Report was not enacted, but BEP requested a legal opinion of GAO, on whether, BEP could give, rather than loan as government property, a currency reader to eligible blind and visually impaired individuals as part of its access program. BEP’s question raises issues related to the intersection of the necessary expense rule and BEP’s compliance with the court’s order with regard to the Rehabilitation Act. The legal decision\textsuperscript{80} issued by GAO found it acceptable to use appropriated public funds and buy currency readers consequently distributing them among blind and visually impaired individuals as part of its compliance with a federal district court order to provide

\textit{Comptroller General}^\textsuperscript{77}.

\textsuperscript{77} Congressional mandates include requirements directed by statutes, congressional resolutions, conference reports, and committee reports. Senior congressional leaders include the President Pro Tempore, Senate Majority Leader, Senate Minority Leader, Speaker of the House, House Majority Leader, and House Minority Leader. Committee leaders include the Chair and Ranking Minority Member of a committee or subcommittee with jurisdiction over a program or activity.

\textsuperscript{78} One of the recent cases of issuing legal decision by GAO, was on request from Bureau of Engraving and Printing.

\textsuperscript{79} Ruling of the Court may be viewed at http://www.moneyfactory.gov/images/order_injunction.pdf

\textsuperscript{80} Legal Decision by GAO http://www.gao.gov/assets/660/655108.pdf
such individuals with meaningful access to U.S. currency.

In this particular case, one may observe several regulations, which are inherent to the Constitutional branch. First, GAO’s legal decisions are not binding for executive branch, which assures separation of powers, second this example gives an opportunity to view GAO fulfilling its functions as a controlling branch entity, acting independently of three other branches. In this special case GAO given a role as separate actor, capable to act independently among three other branches.

Organizational structure of GAO\textsuperscript{81} is construed in a way to address all the possible issues arising from the complex activities of Federal government. On this, GAO has developed 14 mission teams, which cover specific field of executive branch operations. Another important function carried out by GAO is issuing a legal decisions and opinions on bid protests through its Office of General Council. This function was entitled to GAO by Competition in Contracting Act\textsuperscript{82} of 1984 authorized GAO. Analyzing this function of GAO it becomes clear, that although these decisions are not binding there several advantages to file a protest awarding the government contract with GAO, rather than going to court, saving a lot of costs for parties of protests. First, the protesters are not required to pay a fee for their filed complaint, unlike the court’s requirement, second instead of a lengthy litigation, a bid protest filed with GAO must be completed in 100 days. Although, it’s not statutory required, usually the agency suspends granting of contract and waits for GAO’s decision to be made. Agency’s contract award on what the bid protest is filed, on its behalf may any time during protest process also take a so called corrective action. Corrective action assumes re-evaluating of bids proposals, a new award decision or other similar action. If the undertaken corrective action resolves the protest argument GAO dismisses the protest. However, in order to keep an eye on executive branch implementation of the GAO’s decisions, there is a statutory requirement to report unimplemented recommendations to Congress\textsuperscript{83}. However, the bid protest is not an audit process ordinary conducted by GAO in compliance with generally accepted auditing standards. Decisions made based on bid protests do not address or evaluate the effectiveness of the program under what the procurement has been done, neither those decision evaluate the best proposal for the bid. During the bid protest arguing parties, including federal agency, submit written reports and other documents, after receiving them GAO decides to sustain or deny the protest. Sustaining means that GAO finds that the agency has violated statutory regulated requirements of procurement procedure, while denial of the protest respectively means that

\textsuperscript{81} Organizational Chart of GAO [http://www.gao.gov/about/workforce/orgchart.html](http://www.gao.gov/about/workforce/orgchart.html)

\textsuperscript{82} Public Law 98-369, ( 98 Stat. 494)

\textsuperscript{83} 31 U.S.C. § 3554(e)(2)
in GAO’s opinion agency has awarded contract in accordance with statutes and regulations.

The review of statistics of the bid protests the FY of 2013, shows that only in two cases agencies did not fully implement recommendations issued by GAO. As stated above GAO has no authorization to impose any sanctions if its decisions are not implemented by executive branch. In my perspective this is viewed as a positive side in system of checks and balances and separation of powers. While declaratively GAO is a part of the legislative branch, but factually as it is theorized above is part of Control branch, this situation clearly shows an observation of interaction among branches. In a case when agency does not implement the recommendation issued by GAO, it is required to report its failure to do so to GAO. In its turn GAO reports on this to Congress with its recommendation on further steps to be undertaken, such as changing legislation amendment, cancellation of appropriation, investigation by Congress itself or any other action. This tool allows to state that in most of the cases agencies follow GAO recommendation, for example in 2011 all of the 67 sustains of bid protests were implemented by agencies.

GAO has also impact on Appropriations Law. Through its General Counsel it provides opinions to members of Congress, committees or executive agencies on the legality and accuracy of use of public funds. The role of GAO is a big importance because the Constitution does not provide detailed instructions on how Congress should implement its appropriation power, but leaves it to Congress to do so by statute. Congress has in fact done this, and continues to do it, in two ways: through the annual budget and appropriations process and through a series of permanent “funding statutes.” GAO’s important characterization in this is that it GAO publishes “Principles of Federal Appropriations Law” mostly known as Red Book, aimed at an objective to provide reference.

84 GAO bid protest procedure is aimed at analyzing whether agencies complied with statutes and regulations it their judgment of of bid contract proposals, price, cost and time evaluation, consideration of the bidders on the subject of their accuracy in implementation of previous contracts as well as the overall justification in awarding the contract.

85 Since 2013 Congress requires GAO to provide most prevalent grounds of sustaining the bid protests, in order to follow the government wide trends of procurement offences.

86 GAO’s annual report to Congress on bid protests for the fiscal year of 2013: http://www.gao.gov/assets/660/659993.pdf

87 The permanent funding Statutes are mostly found in Title 31 of the United State Codes. Some examples of those statutes are bringing a clear example of what should GAO follow in this regard, A statute will not be construed as making an appropriation unless it expressly so states. 31 U.S.C. § 1301(d). Agencies may not spend, or commit themselves to spend, in advance of or in excess of appropriations. 31 U.S.C. § 1341 (Antideficiency Act).

Appropriations may be used only for their intended purposes. 31 U.S.C. § 1301(a) (“purpose statute”). Appropriations made for a definite period of time may be used only for expenses properly incurred during that time. 31 U.S.C. § 1502(a) (“bona fide needs” statute). Unless authorized by law, an agency may not keep money it receives from sources other than congressional appropriations, but must deposit the money in the Treasury. 31 U.S.C. § 3302(b) (“miscellaneous receipts” statute)
on the areas of law on which Comptroller General hands over decisions. These decisions become a part of extensive US legislation that is relied upon by Congress, courts, federal agencies and the general public. Appropriations decisions address matters such as, whether federal agency use of funds complies with appropriated purpose or whether that use violates statutory restriction. Although, US federal budget is not balanced, but Antideficiency Act requires agencies from obligating or expending funds in excess of amounts provided by law or before funds are appropriated. This function of GAO also states its attachment to the independent “Control branch”, which follows up the circumstances when and how the violation occurred. Alike other GAO decisions, appropriation decisions are not binding for executive branch, but they become binding when the same issue raises during GAO’s audits. Besides, Congress uses the appropriation decisions as a basis during legislative process.

GAO mission in pursuing federal interest is not limited only with auditing just financial statements and/or performance. The uniqueness, which assures comprehensiveness and effectiveness of GAO activities is that its mandate goes to any operation undertaken by all federal agencies in any field. Thus, it has outlined five following key issues in its activities;

1. Fiscal Outlook and the Debt
2. High Risk list
3. Duplication and Cost Saving
4. Recovery Act implementation
5. Assessment of Technologies impact

Each of abovementioned key issues is vital for Federal Government operations and highlights the problems in the its field. Instructive point of analysis made by GAO on key issues is that it’s not only notes the problem but proposes a solution to overcome for both legislative and executive branches. On this, each year GAO outlines those problems, which are mostly threatening to the Government operations and in a High Risk list, as well as removes previously designated High Risk areas. This procedure allows to keep track on government performance and achieved improvement under jurisdiction of every executive agency. The other key issue, which perhaps is actual for all the governments, is duplication.

89 Once it is determined that there has been a violation of Antideficiency act 31 U.S.C. §§ 1341(a), 1342, or 1517(a), the agency head “shall report immediately to the President and Congress all relevant facts and a statement of actions taken.” 31 U.S.C. §§ 1351, 1517(b). The reports are to be signed by the agency head. The report to the President is to be forwarded through the Director of OMB. In addition, the heads of executive branch agencies and the Mayor of the District of Columbia shall also transmit “[a] copy of each report . . . to the Comptroller General on the same date the report is transmitted to the President and Congress.” 31 U.S.C. §§ 1351, 1517(b), as amended by the Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, div. G, title II, § 1401, 118 Stat. 2809, 3192 (Dec. 8, 2004).
90 GAO High Risk areas overview may be found at http://gao.gov/highrisk/overview.
of the same function or investment by two or more agencies, thus GAO annually monitors a number of federal programs. This function of GAO could be considered as having both financial and nonfinancial benefits\textsuperscript{91}.

GAO’s mission also includes coordination of work with Federal, State and Local audit organizations. In this regard GAO has a statutory authority to establishing Government Auditing Standards\textsuperscript{92} (Yellow Book) and Internal Control Standards\textsuperscript{93}(Green book). This Green book on its turn provides control mechanisms for the managers to pursue, while implementing a program. As it may be seen from the analysis given above GAO supports the Congress to implement its “power of purse”, which can be described as the most important tool to curb Presidential power and executive branch in general.

However, in order to have fully responsible Control branch it is needed to establish a mechanism of control capable to oversee the operations of the Controlling agency itself. As discussed in previous sections each of the federal institutions, no matter it is in the executive or legislative, judicial branch or even “Control Branch”.

In the previous section of this paper Offices of Inspector General (OIG) were mentioned, as a part of the “fourth” branch in the US. OIG is also a unique establishment of such Institutions. It is relatively new institution\textsuperscript{94} in comparison with GAO, however since 2008 GAO has a statutory requirement to establish an Office of IG\textsuperscript{95} in its structure as well. IG of GAO is not considered as subordinate of Comptroller General, like in any other federal agency. Existence of OIG at GAO, assures accountability in its own operations and efficiency and public confidence of GAO is for some sense relied on the existence of such office.

Further discussion will be held on the Inspector General Institution, analysing its legal status in the Federal Government background and the objectives it is pursuing\textsuperscript{96}. Establishment of OIG in 1978 was preceded by Congressional investigation from 1974 to 1978s, which revealed shortages in detecting and preventing fraud, abuse of public

\textsuperscript{91} According to GAO report for Fiscal Year 2012 non-financial were Documented in Fiscal Year 2012 from GAO work percent of total Public Insurance and Benefits 3; Public Safety and Security 36; Acquisition and Contract Management 8; Tax Law Administration 4; Program Efficiency and Effectiveness 14; Business Process and Management 35.

\textsuperscript{92} Full text of Government Auditing Standards could be found at \url{http://www.gao.gov/assets/590/587281.pdf}

\textsuperscript{93} Comptroller General was by law required to set up Internal Control Standards in 1982 and the Green Book was issued in 1983. More on Green book could be fount at \url{http://www.gao.gov/products/GAO-13-830SP}

\textsuperscript{94} Inspector General Act of 1978

\textsuperscript{95} Public Law 110-323, 122 Stat.3539

funds. The first step after those investigations was taken in 1976 by establishing OIG\textsuperscript{97} at the Department of Health, Education and Welfare. In just a decade a number rose up to 56, when OIG statutory were established within the executive branch federal agencies\textsuperscript{98}. The Inspector General Act of 1978\textsuperscript{99} is considered to be the legal cornerstone of current OIG community. This act can be one in the series of acts passed in 1978 aimed at rising good governance, fight corruption and assure accountability. The OIG main purpose was designed to act independently, even though being located within the federal agency. During the first years of its existence among agencies themselves and the OIGs. This arose, because even though IG has mandatory reporting to the head of the agency, latter one does not have any mandate to interfere in the audit or investigation conducted by the OIG, with some exceptions on prohibition of activities based on disclosure of sensitive information\textsuperscript{100}. In fact, the confrontation lead to questioning the Constitutionality of IG institution itself, having argued the dual reporting obligation of IG\textsuperscript{101} to

\begin{footnotes}
\textsuperscript{98} H.R. REP. No. 1027, supra note 5, at 1-2. As a result of the subsequent amendments to the original Act, the other agencies with Offices of Inspector General include the Department of Defense, the Department of Education, the Department of Justice, the Department of State, the Department of the Treasury, the Agency for International Development, the Nuclear Regulatory Agency, ACTION, Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Office of Personnel Management, the Panama Canal Commission, the Peace Corp, the Pension Benefit Guaranty Corporation, the Railroad Retirement Board, the Resolution Trust Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the Tennessee Valley Authority, the United States Information Agency, the United States International Trade Commission, and the United States Postal Service. 5 U.S.C.A. app. 3, §§ 2, 88-E, 11(2) (West Supp. 1991). The Office of Inspector General for the Community Services Administration was abolished on October 1, 1982. Pub. L. No. 97-35, Title VI, § 683(a), 95 Stat. 519 (1981). The Central Intelligence Agency has an Office of Inspector General created under a separate statute. 50 U.S.C.A. § 403a (West 1991).
\textsuperscript{100} According to several clauses in paragraph 8 of Inspector General act some head of the departments may prohibit IG from carrying out or completing any audit or investigation, issuing subpoena, if head of the respective agency decides that it will lead to disclosing any sensitive information affecting National Security. However, if any head of the agency exercises this power IG has to notify such matter to Congress.
\textsuperscript{101} According to §5 of Inspector General Act "…(a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to— (1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment disclosed by such activities during the reporting period; (2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1); (3) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed; (4) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; (5) a summary of each report made to the head of the establishment under section 6(b)(2) during the reporting period; (6) a listing, subdivided according to subject matter, of each audit report, inspection reports, and evaluation reports issued by the Office during the reporting period and for each report, where applicable, the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs) and the dollar value of recommendations that funds be put to better use; (7) a summary of each particularly significant report; (8) statistical tables showing the total number of audit reports, inspection reports, and evaluation reports and the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs)…".
\end{footnotes}
Head of the Agency and respective committees or subcommittees of Congress. Concerns of the executive branch and the Department of Justice, in particular, were about the implications of the dual reporting requirements of the Act\(^\text{102}\) and the limitations on the President’s removal authority (which was discussed above in this paper). The executive branch considered such provisions to be unconstitutional and violative of the separation of powers Constitutional principle. Other executive agencies raised similar objections on the basis of possible deconcentration of managerial authority and activity. This analysis one more time raises a debate on the extent of importance of Presidential removal power and its impact on the activities carried out by “Control branch”. The all idea of Inspector General was about to create a brand new system of objective and independent control, out or with minimized impact from executive branch. The Congressional reports mentioned earlier, were bearing the inefficiency of the internal control system preceding OIG establishment, in both inadequacy of human resources and lack of independence of auditors\(^\text{103}\). This brought to the situation where in some cases a number of agencies’ activities has never been audited so far\(^\text{104}\). The public “cry” was risen to the extent that led to the introduction of bill to reorganize the executive branch of the Government and increase its economy and efficiency by establishing Offices of Inspector General in several executive agencies\(^\text{105}\), having an idea of transferring audit and investigative authorities of appropriate agencies to the OIG. The bill was introduced by Republican Congressman L.H. Fountain, who had a big concerns over the efficiency in the management, but supported the term which granted less independence to IG’s on the contrary opinion of Democrat B. Rosenthal, a liberal from New York\(^\text{106}\). L.H. Fountain was able to defend his point in Congress, thus the IG act was passed having his approaches prevailed. Originally only twelve OIGs were supposed to be appointed by President by the advice and consent of Senate\(^\text{107}\), while the amendments to the act adopted ten years later created IG offices in appropriate agencies to be appointed by heads of those agencies\(^\text{108}\). Even in that situation the independence of IG institution and


\(^{103}\) House committee report noted that witnesses from the Interior Department testified that their audit manpower was sufficient for only half of their priority workload and that they had no resources for affirmative programs to detect fraud.

\(^{104}\) H.R. REP. No. 584, supra note 33, at 6. (For the General Services Administration, 20 years; for the Department of Commerce, 13 years; for the Department of the Interior, 9 or 10 years; for the Department of Transportation, 10 years; for the Small Business Administration, 12 to 14 years; for the Veterans Administration, 10 to 12 years.)

\(^{105}\) H.R. No. 2819, 95 Congress

\(^{106}\) Congressman Benjamin Rosenthal, had supported establishment of an Inspector General institution charged with broader authorities and even greater independence from the executive branch. Rosenthal’s understanding was that, the Inspector General should have been appointed for a single fixed term of ten years and would not have been eligible for reappointment. Further, unlike the current Inspector Generals, Rosenthal’s would have been granted testimonial subpoena power. However, under Rosenthal’s approach Inspector General could only have had the authority to conduct investigations, and never audits. See H.R. 5302, 94th Cong., 2d Sess. (1976).


thus its effectiveness was guaranteed by several provisions of the Inspector General act. Analyzing the mentioned act one may conclude, that this was a step forward in a path of establishing “Control Branch”. Having purpose of establishing the “independent and objective” audit and investigative unit under one command within the executive agency the Act combined several clauses to ensuring independence of this institution. In subsection (a) of its third section the Act obliges to appoint an Inspector General without regard to his/her political affiliation\(^{109}\). Moreover, under the U.S.C. 5 title 7324 \(^{110}\) the Inspector Generals are prohibited in engaging in political or partisan activities. Even though it is prescribed that the Inspector General shall report and be under the general supervision of the agency's head or the officer next in the rank, but no any other official of that agency shall supervise or require reports from IG, in the same time the Act provides a clause banning either of those two officers to prevent IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. Emphasizing the independence of the OIG the Act authorizes them the duty and responsibility to provide policy direction for and to conduct, supervise, and coordinate audits and investigations related to the programs and operations of their respective agencies's. The next authority, which is given and put in the same line with executive agencies, is that they IGs are empowered to review and comment upon existing and proposed legislation and regulations relating to their agencies' programs and operations; to recommend policies designed to promote economy and efficiency with respect to any of their agencies' operations, or any activities financed by their agencies; to report any of their findings to the heads of their agencies and to Congress and to report to the Attorney General the cases in which they see the violation of criminal law\(^{111}\). In above mentioned examples independence and separation from executive or any other branches of government is obviously underlined, because before this act many of the executive branch agencies, under OMB circular No. A-19\(^{112}\), were and are currently required to undergo legislative coordination and clearance before contacting Congress. Following sections of the Act, especially paragraph 6 also contribute to broadening and assuring the independence of IG, authorizing them “to make such investigations and reports relating to the administration of the programs and operations [of their] establishment[s] as are, in the[ir] judgment necessary or desirable”. The Act gives a power necessary to effectively

\(^{109}\) There shall be at the head of each Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.


\(^{112}\) Current version of the OMB circular No. A-19 could be found at [http://www.whitehouse.gov/omb/circulars_a019/](http://www.whitehouse.gov/omb/circulars_a019/)
execute their duties, importantly mentioning their authority to have access to the records of their agencies; to request information and assistance from other federal, state, and local agencies; to issue subpoenas; to administer oaths; to have direct and prompt access to the heads of their agencies; to select and appoint employees; and to contract for various services” with private sector experts.

While speaking on development of independent “Control” branch, one should also consider political development of the story around Inspector Generals community. In a letter announced on January 21 1981 by the White House’s office of press Secretary, it becomes clear that, on the same day, when President Reagan was sworn in, he sent a letter to the Congress leaders expressing his will to remove from offices more than a dozen active Inspector Generals and deputy Inspector Generals. This fact proves the theory of the separation of this power, from executive branch, because in my view this Institution having such a short history was regarded by Reagan’s administration as one of the most important ones in one line with the heads of the executive agencies’. According to the letters sent by President Reagan to Congress the administration regarded OIG as a structural component of the executive branch, arguing the Constitutionality of the way it is construed. Despite

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113 Letter to the Speaker of the House and the President Pro Tempore of the Senate on the Inspector General Appointees of Certain Executive Agencies. Dear Mr. Speaker: (Dear Mr. President:)

113a This is to advise the Senate that I have today exercised my power as President to remove from office the current appointees to the position of Inspector General in the following departments and agencies:

113b 1. Department of Agriculture, 2. Department of Commerce, 3. Department of Education, 4. Department of Housing and Urban Development, 5. Department of the Interior, 6. Department of Transportation, 7. Community Services Administration, 8. Environmental Protection Agency, 9. General Services Administration, 10. National Aeronautics and Space Administration, 11. Small Business Administration, 12. Veterans Administration. Some of these individuals may be involved in investigations which would be aided by some continued association with their offices. We will want to review these situations to consider asking such individuals to continue their participation on an appropriate basis. Uncovering fraud, waste and mismanagement of federal funds as well as the promotion of economy, efficiency and effectiveness in the administration of federal programs and operations will be an important priority in my Administration. The Inspectors General will have critical roles in the achievement of this objective. As is the case with all positions where I, as President, have the power of appointment by and with the advice and consent of the Senate, it is vital that I have the fullest confidence in the ability, integrity and commitment of each appointee to the position of Inspector General. I will be submitting to the Senate in the near future my nomination of an individual for each of these positions who has my confidence and who meets the appropriate qualifications. If any of these individuals wishes to be considered for reappointment, they may indicate their interest and they will be judged in competition with other applicants.

114 During Reagan administration executive branch constantly argued some clause of Inspector General act and even Constitutionality of the Inspector General Institutions in common. This impression derives from reviewing President’s Reagan address on the occasion of signing amendments on Inspector General act on October 18, 1988. I have today signed S. 908, the "Inspector General Act Amendments of 1988." My Administration has had a long-standing and deep commitment to the work of the Inspectors General within the Executive branch. Their efforts to combat fraud, waste, and abuse deserve our sincere thanks and continued support. I must, however, note that S. 908, like the Inspector General Act of 1978, raises certain constitutional concerns. Unless properly construed, the Act’s reporting requirements could impermissibly interfere with the President’s control over the deliberative processes of the Executive branch. For example, the disclosure of opposing views with respect to decisions at issue unnecessarily creates divisions within the Executive branch that could chill the frank exchange of views necessary to effective decision making. Such requirements would conflict with the constitutional protection afforded the integrity and confidentiality of the internal deliberations of the Executive branch and the President’s authority as head of the Executive branch to “take care that the laws be faithfully executed,” U.S. Const., art. II, sec. 3, and to coordinate and supervise his subordinates. I have signed S. 908 with the
the fact that even in the basic concept of governance suggests not two have “two bosses”, the Inspector General Act, has a statutory requirement of dual reporting to the head of the Agency and the Congress. On the one hand Inspector General works under both Congress and head of the Agency, on the other hand it has no any statutory requirement to follow their guidance in operational activities. In the case of IG this simple rule makes a little sense, because even though the reporting requirement exists, neither of report receivers is able to prohibit them of carrying out any initiated audit or investigation, unless both head of the agency and the Congress “decide”, that there is threat to disclose sensitive information. Thus, there should be mutual agreement between Legislative and Executive branches, in order to interfere with “fourth” branch activities. Inspector General Act clearly states that Inspector Generals are themselves heads of separate agencies providing several vital mechanisms and Congressional support for Inspector Generals, in case friction with the head of the agency, contributing to the independence and objectivity of audit and investigation carried out by OIG. In my view the efficiency of IG operation is also based on the fact that it is authorized to conduct both audits and investigations. At first sight, having given this two functions under one single office could be considered as concentration of too much power in one’s hands. However, the statutory mechanisms refrain OIG of abusing the power, since provision §4 (b)(2) (d), requires each Inspector General to report to the Attorney General any violation of Criminal law, and this provision brings any investigation under the cross control of both respective Inspector General and Attorney General (DOJ). About half of the Offices of Inspector Generals have the investigation units, while those who don’t have, in the event when investigation need arises in the agencies, which do not have investigative unit, they usually refer to other Inspector Generals who have investigative units in their offices. Having the authority to conduct criminal investigation gives to Inspector General some distinct role in the system of national Government and underlines institutional uniqueness of Inspector Generals. The understanding that it will be implemented consistent with these constitutional principles.

This idea of consent to be made between Congress and the head of the agency, in order to prohibit action undertaken by Inspector General, derives from the analysis of several section the 8th paragraph of Inspector General Act: For example head of the agencies of defence and intelligence community agencies.

Excerpt from Inspector General Act t §6 (2) (d)(1)(A) (i) “...each Office of Inspector General shall be considered to be a separate agency; and (ii) the Inspector General who is the head of an office referred to in clause (i) shall, with respect to such office, have the functions, powers, and duties of an agency head or appointing authority under such provisions..."

For example paragraph 5 (d) of IG act requires that “Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate”.

The quantity of those offices of Inspector Generals, which have investigative units is given by the Council of Inspector Generals in Integrity and Efficiency.
investigative process of Inspector Generals is construed to meet all the legal requirements, alike any other law enforcement agency. As for the audits conducted by Inspector Generals, in compliance with OIG mission, there are several types of them. Generally the types of audits can be defined as following: 1. Financial audit, 2. Performance audit, 3. Program audit, 4. Economy and Efficiency audits. While analyzing the practice and legislation on audits conducted by Inspector Generals it for some sense becomes clear that they enjoy less independence from Congress, than GAO does. There are several grounds which affect on this situation. At first it should be considered, that IGs report their findings both to Congress and federal agencies and in most of the cases the results or expectations from the report of Congress and agencies’ heads are different or sometimes even opposite. This may become a source of friction among agency, Congress and OIG. In case of just a little lack of independence in current situation the objectivity of the report may be questioned. Relevancy of this issue may be more argued in case of the IGs, who are appointed directly by the head of the agencies, without presidential nomination and Senate’s approval. Thus, recognition of OIG as an institution of separate branch is vital for objectivity of the reports and efficiency in general. Secondly the audits are conducted using the Government Auditing standards established by Comptroller General of the United States. In this case one would argue that auditing with the standards imposed by the officer of legislative branch may put executive branch agencies and officers in an unfavorable condition, thus the theoretical question of the objectivity and accuracy of the audit should be answered. There is a question of objectivity and complexity in determinations of different types of audit as well. In this case the objectivity of financial audits are much clearer, because if financial audits are mainly focused on financial flows and their compliance with laws, reports, transactions and a number of other financial records, in case of performance audits it harder to achieve objectivity in comparison with financial audits. Although there has been developed a checklist for performance audit.

119 The Office of Inspector General investigates complaints or allegations of wrongdoing or misconduct by employees or contractors that involve or give rise to fraud, waste or abuse within the programs or operations of respective federal agency. More details on investigative process of Inspector Generals can be found at http://www.fcc.gov/encyclopedia/office-inspector-general-investigations#process.

120 For example Library of Congress has a statutory Office of Inspector General (2 U.S. CODE § 185). By the statute Librarian of Congress appoints Inspector General and by another statute (2 U.S. CODE § 136) Librarian of Congress is authorized to “… make rules and regulations for the government of the Library”. According to this Librarian issued a LCR 211-6 (Library of Congress regulations), titled as “Functions, Authority, and Responsibility of the Inspector General”. Although section (c)1)) of the 2 U.S. CODE § 136 states that “Sections 4, 5 (other than subsections (a)(13)), 6(a) (other than paragraphs (7) and (8) thereof), and 7 of the Inspector General Act of 1978 (5 U.S.C. App.) shall apply to the Inspector General of the Library of Congress and the Office of such Inspector General and such sections shall be applied to the Library of Congress”. It’s seems that it’s threat to independence of OIG at Library of Congress, because head of the agency is the one to establish authority of Inspector General.

performed by Inspector Generals\textsuperscript{122}, during performance audits the auditors should make subjective judgments in assessing quality of operations. This type of judgment is based upon personal belief of each auditor, on whether the operational activity has been done in a way to achieve the best possible outcome with minimum use of resources. Issue of the judgment reflected in a performance audit statement may become the core point of argue among Inspector General and agency’s head and a program implementator. Besides, any report outcoming an opinion other than the formal agency’s one may be blamed to be politically motivated. Thus, non-partisanship, as well as mechanisms and proof of independence, objectivity should be prioritized at the Offices of Inspector Generals.

The independence, which is currently exercised by OIG community was achieved, firstly because IG community’s ability to keep itself out of being engaged in politically motivated activities and secondly, in 2008 Inspector General Act was amended\textsuperscript{123} limiting Presidential removal power exercised towards IG community, stating that “If an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.” for “The President shall communicate the reasons for any such removal to both Houses of Congress”. This provision also paced a step forward in establishing an independent “fourth branch”.

Several factors contribute and guarantee depoliticized actions in the work of Inspector Generals, however some may be highlighted those are transparency of activities, record keeping and exemption from engaging in agencies routine operations, as well as community-wide decision making, within the scope of Council of the Inspector Generals on Integrity and Efficiency (CIGIE).

As discussed above President Reagan was the first and the last one to treat IGs as political appointees in a line with cabinet members and heads of Federal Agencies. This opinion derives from the letter President Reagan addressed to Congress informing about removal 12 Inspector Generals\textsuperscript{124}, on the same day he assumed presidency. President Reagan was also the one who signed an executive order 12301\textsuperscript{125}, establishing the

\textsuperscript{122} The Checklist is developed by CIGIE and can be found at https://www.ignet.gov/pande/audit/appe09.pdf.
\textsuperscript{125} Executive Order 12301 - “Integrity and Efficiency in Federal Programs” http://www.presidency.ucsb.edu/ws/?pid=43593
President’s Council on Integrity and Efficiency\textsuperscript{126}. Although formally this order was aimed to raise effectiveness of IG operations, perhaps there was also a hidden motivation to gain centralized control over community-wide decision making. In 2008 the Council became statutory\textsuperscript{127}, changing its name to Council of the Inspector Generals on Integrity and Efficiency (CIGIE), which is unique governmental establishment gathering all 72 statutory Inspector Generals and 6 additional members\textsuperscript{128}. The mission of CIGIE is also unique as it has some statutory power to lead the IG community. If being treated as a part of separate “control” branch, CIGIE may be compared as Judicial Conference for Inspector Generals community\textsuperscript{129}. Its role not to oversight Inspector Generals’ activities, but to coordinate their activities based on the decision made on the consensus by the Council members. The coordination exercised by the Council is implemented in a variety of ways\textsuperscript{130} in compliance with CIGIE’s charter\textsuperscript{131}. There are seven standing committees in CIGIE structure, which address the audit, human resource, information technology, inspection and evaluation, integrity, investigation, and legislative needs of the Inspector General community. The other structural units of CIGIE is training institute, which consists of 3 Academies: Audit, Inspection & Evaluation Academy\textsuperscript{132} (AI & E); Inspector General Criminal Investigator Academy\textsuperscript{133} (IGCIA); Leadership and Mission Support Academy (LMS). The existence of these academies is seen as an assurance of efficiency and independence of “fourth” branch in general and OIG

\textsuperscript{126} There was another Council established by the Executive Order # 12805 of May 11, 1992. So prior to the establishment of the CIGIE, the Federal Inspectors General operated under the auspices of two councils. The President’s Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE). This lasted until the signing of Public Law 110-409.

\textsuperscript{127} Public Law 409; 122 Stat. 4302; 2008 110 Enacted H.R. 928

\textsuperscript{128} Paragraph 11 of the Inspector General Act provides a requirement to me member of CIGIE for the Controller of the Office of Federal Financial Management, a senior level official of the Federal Bureau of Investigation designated by the Director of FBI, Director of the Office of Government Ethics, Special Counsel of the Office of Special Counsel, Deputy Director of the Office of Personnel Management, Deputy Director for Management of the Office of Management and Budget.

\textsuperscript{129} The mission of CIGIE is to address integrity, economy, and effectiveness issues that transcend individual Government agencies; and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspectors General.

\textsuperscript{130} According to the CIGIE charter Functions and Duties are to “Continually identify, review, and discuss areas of weakness and vulnerability in Federal programs and operations with respect to fraud, waste, abuse, and mismanagement; Develop plans for coordinated, government wide activities that address these problems and promote economy and efficiency in Federal programs and operations, including interagency and inter-entity audit, investigation, inspection, and evaluation programs and projects to deal efficiently and effectively with those problems concerning fraud and waste that exceed the capability or jurisdiction of an individual agency or entity; Develop policies that will aid in the maintenance of a corps of well-trained and highly skilled OIG personnel; Maintain an internet website and other electronic systems for the benefit of all IGs as the Council determines are necessary or desirable; Maintain a Training Institute with one or more academies for the professional training of auditors, investigators, inspectors, evaluators, and other OIG personnel; Submit recommendations of individuals to the appropriate appointing authority for any IG appointment under either section 2 or section 8G of the IG Act, or any other open IG appointment, as appropriate; Make such reports to Congress as the Chairperson determines are necessary or appropriate; and Perform other duties within the authority and jurisdiction of the Council, as appropriate”.

\textsuperscript{131} CIGIE charter as of March 15 2011 is available at \url{http://www.ignet.gov/pande/cigiecharter031511.pdf}.

\textsuperscript{132} Audit, Inspection, and Evaluation Academy \url{http://www.ignet.gov/pande/pd/aie.html}.

\textsuperscript{133} Inspector General Criminal Investigator Academy \url{http://www.ignet.gov/igcia/index.htm}.
community in particular. Another factor contributing to the efficiency of CIGIE is that it’s funded by Inspector Generals, based on the budget approved by the Council, assuring independence from other agencies. There are several programs in which GAO and CIGIE are engaged as a national of leaders of “fourth” branch. The recent one was “Data Analytics For Oversight and Law Enforcement”, where in cooperation with Recovery Accountability and Transparency Board one of the current most important topics was raised on available data sharing among federal, state, local agencies. Many of the problems on Government Control were discussed, such as limited coordination and duplication of work among federal, state, local inspectors and the extent to which each stakeholder can share the information and lack trust between information holder and oversight entities. However, these examples show that on any level oversight of agencies or entities face the same challenges.

Even though the current system of Government Control in the US is unique and relevant to face current challenges, it’s not flawless. Even an Inspector General also was blamed of breaking the law, lack of independence, abusing his power and softening the results of investigation on misconduct in favor of executive agency’s interest. In another case occurred in 2009, right the next year after the Presidential power to remove Inspector General was limited, President Obama removed the Inspector General Corporation for

134 Funding section of the CIGIE’s charter prescribes: “The Council is authorized through section 1105(a)(33) of title 31, United States Code, to have a separate appropriations account. Additionally, and in accordance with section 11 of the IG Act, as amended, and notwithstanding section 1532 of title 31, United States Code, or any other provision of law prohibiting the interagency funding of activities, the Executive Chairperson may authorize the use of interagency funding for Government-wide training of OIG employees, Integrity Committee (IC) functions, or any authorized purpose determined by the Council. Upon the Executive Chairperson’s authorization, any department, agency, or entity of the executive branch which has a member on the Council shall fund or participate in the funding of such activities. If necessary in the absence of other funding, the Chairperson, in consultation with the Executive Council, will determine an assessment for each OIG member (prorated based on the member’s appropriation or funding level) to cover the anticipated annual costs of the Council. This prorated assessment will be presented to the Council membership for concurrence. The Council may establish in the U.S. Treasury a revolving fund entitled the “Inspectors General Council Fund” or enter into an arrangement with a department or agency to use an existing revolving fund. Any amounts in the fund shall remain available to the Council until expended, without any fiscal year limitation”.


136 More information on the board activities can be found at http://www.recovery.gov.


138 For example in December 2013 acting Inspector of such an important agency as Department of Homeland Security was forced to step down because of allegations that Acting Inspector General. Charles K. Edwards was "susceptible to political pressure" and that he changed and withheld information for reports on the misconduct of U.S. Secret Service agents who hired prostitutes in Cartagena, Colombia, during a visit before a 2012 presidential trip. Besides, a group of whistleblowers within his office had claimed Edwards was eager to win the White House nomination to be the permanent inspector general after two years in the acting role, and was easily susceptible to political pressure from the top leadership of the Department of Homeland Security. Edwards was also accused of breaking the law by employing his wife as a supervisory auditor in his office. Whistleblowers asserted Edwards and his top staff pushed to change findings in reports and delay investigations. Others accused him of retaliating or threatening to retaliate against staff who resisted him. Other claims included that he used staff to do personal work for him. For more information on this see Washington Post December 16 2013 issue, article by Carol D. Leonnig.

National and Community Service (CNCS). By many experts this removal was treated as political removal of the person who investigated political supporter and fundraiser of the President Obama. In its turn Congressional investigation\(^{140}\) found this removal as contradicting with Inspector General Act requirements. As Congressional report concludes this was done in a time, when the annual budget of CNCS is announced to be raised from $1.19 billion to $6 billion\(^{141}\). Removed Inspector general filed a lawsuit arguing legitimacy of his removal\(^{142}\). Although dismissed Inspector General lost the case\(^{143}\), it triggered a rise to public perception that the President’s action was politically motivated, thus seeking a ways of improvement.

As it was analyzed above, each of the controlling powers vested in different powers are reflected in Constitution and statutes which compile the interrelated system of agencies with a purpose of ensuring efficiency, accountability and transparency. The main purpose, which entitles “fourth” branch a unique role and functionally separates it from current tripartite system of Federal Government, is that its only function is to carry out oversight activities thus making its contribution to the unified Government Control process.

The analysis above concludes that still some steps should be undertaken to assure vital independence for “fourth” branch, in order to have accountable, effective and to most possible extent transparent government.

**Conclusion and Recommendations**

Currently, there is one distinction for the institutions of “fourth” branch (GAO and OIG), both of them don’t have statutory authority to cause change in the operation of agency. On this, it could be defined that those institutions are about to have an authority to oversight but limited to exercising full control over the governing process of operations. Instead, Congress and agencies are most likely to follow the recommendations proposed by “fourth” branch, in order to avoid further misconduct and assure efficiency in operations. Technically, agency head or Congress can legally control the operations, but they will be unable to do so without the support and advice of the “fourth” branch. Thus the independence, which is currently exercised a limited way by “fourth” branch is considered


\(^{141}\) Id. page 62.


as a core component of Federal Government control authority, applicable to all actors of current tripartite system of US Government. However, from positive perspective this restriction keeps “fourth” branch out of political affiliation and partisanship. Besides US Federal legislation fails to provide a time frame for conducting oversight activities in both duration of inspection, nor in regard of timeframe in what the audit or inspection should be considered. This may lead to misuse of time and unjustified extension of duration of audit and inspection, as well as deconcentration of available resources.

Internal auditors and such units which existed within the agencies structures prior to the statutory establishment of Inspector General Offices could be considered as lacking efficiency and objectivity, since their reports were not publicly available and GAO has no such resources to audit all the operations undertaken by the agencies, to double check the operations. While establishment of OIG in federal agencies and broad independence they enjoy, is seen as setting up confident partnering between OIG community and GAO. On this, the partnership could be extended to train GAO auditors and investigators at CIGIE training institute. Besides the investigations and audits could be conducted jointly by GAO and IG offices, which lead to better results and resource savings. The Government Auditing Standards used by Inspector Generals for their auditing activities should be externally developed and/peer reviewable by Inspector Generals, including the General Counsel offices, as well as by Council of the Inspector Generals on integrity and Efficiency. This will assure independence and objectivity of the audits, while applying them in the executive branch agencies. Besides, Executive orders of the president should not be binding for even those Offices Inspector Generals which are established in executive branch agencies, because statutory they are considered separate entities but not the adjunct or structural units of those executive agencies. Thus Inspector General community members should concentrate their efforts to minimize impact of Executive orders to IG offices activities, likewise Congress should consider amending a law in a way exempting OIG from being covered by Executive orders. Besides, there is a need of statutory or even Constitutional amendments to define the scope of executive agencies regulations or rules. There is a growing concern over this issue, since some experts observe the raise of another “fourth” branch, which is considered to be a bureaucratic apparatus of federal agencies 144.

Most of the Elected officials and their staff members, administrative operations and activities on federal level lacks to be controlled in a way similar to the executive branch

144 For example in 2007 Congress enacted just 138 Public laws, while executive agencies finalized about 3000 rules and regulations. More on this could be found in an article by Jonathan Turley in 05/24/2013 issue of The Washington Post.
agencies, if ethics commissions are not considered, since in my view, the main focus of those commissions is personal behavior of public officers but not the programs they run. Moreover, in some cases Congress exempts itself from some provisions of Law including Control option, similar to other Government branches\textsuperscript{145}. Even though, Congressional Accountability Act of 1995\textsuperscript{146} has made many of the laws applicable to Congress, which is still exempt from regulations, binding for other Federal agencies\textsuperscript{147}. Since, only House of Representatives has Office of Inspector General, with head of the office appointed by Speaker, majority and minority leaders jointly\textsuperscript{148}. House IG is not covered by Inspector General Act and can not be considered as competent member of IG Community, as well as lacks working mechanisms of independence while conducting its audits and investigations. It’s not clear why the Senate does not have Inspector General Office\textsuperscript{149}, and the idea is not about just having the a structural unit engaged conducting audit or investigation with possible other title, but to have definite Control Unit similar to other Federal Agencies.

According to 31 U.S.C. 701 (1)\textsuperscript{150} Executive Office of the President is under the GAO mandate but does not have external control mechanisms on their operations such as Inspector General Office. This exemption provided by the Inspector General Act does not meet current challenges faced by the executive branch, as it is obvious that EOP political affiliation sometimes leads to unjustified practice and decision making\textsuperscript{151}. There were even case, when White House made fully politicized, unjustified decision neglecting institutional independence of Inspector General while removing Gerald Walpin from Inspector General position\textsuperscript{152}. Thus, the establishment of the Office of Inspector General is actual for two purposes - first to have assured system of checks and balances within White House operations and to follow up principle of equality within the Federal Government branches.

Exemption of Federal Judiciary from having IG offices puts it out of the equality principle set up in the Constitution and may be considered as inefficient public oversight,
since IG reports are mostly publicly available. However, if the GAO is to be considered as a separate and independent branch of the Government, its mandate could be broaden to cover all of the Judiciary’s administrative operations, currently the statute excludes only Supreme Court out of GAO’s mandate. Since 2006 several attempts were made to establish an Office of Inspector General for the federal Judiciary, in both House and Senate. In July 2006 Judicial Conference strongly opposed this idea. Even an opinion was expressed to appoint a sitting Judge to serve as an IG, but till now the bill was not voted. Several times the topic of establishing OIG at Judicial branch was risen in Congress, but has not been passed. However, if it is passed, it will become implementation of the Constitutional principle of checks and balances. In my view, Inspector General of Federal Judiciary has to be appointed by Chief Justice, in order to comply with constitutional requirement of separation powers among branches. The need establishment of OIG in Judicial branch is vital, in order to improve public confidence in Judicial System and avoiding of misconduct and power abuse by Judges or judicial staff.

The existence of “fourth” branch is recognized in some countries and European Union, and it will give more independence to the GAO and OIG, if these institutions will be recognized de jure. This will boost efficiency and integrity among these institutions, as well as minimize risk of executive branch’s interference in the activities of “fourth” branch. Although, there are several organizations which gather Supreme Audit Institutions on international and regional level, no any international treaty or convention has been ratified or proposed to be ratified by any national government to ensure the widely recognized and binding standards of Government Control, which seems to be vital for the sustainable development of global economy and intergovernmental relations. The US in its role as

153 31 USC 701 (1) GAO mandate “does not include the legislative branch or the Supreme Court”. Pub. L. 97–258, Sept. 13, 1982. 96 Stat. 887
156 This opinion was expressed by Professor Arthur Hellman of the University of Pittsburgh School of Law when he supported H.R. 5219, but suggested that it be made clear in the proposed statute that the IG would have no authority over the substance of judicial decisions. He also recommended that an IG’s responsibilities in misconduct proceedings would not begin until after the chief judge and the circuit judicial council have completed their work. Current law would be amended to authorize the Judicial Conference to review a council’s action in cases where the chief judge has dismissed the complaint and the council has denied review. The IG would carry out the necessary investigations. Hellman also proposed a change in title from Inspector General to the “slightly less overbearing” Special Council to the Judicial Conference and suggested that the Chief Justice might want to appoint a sitting judge to serve as the IG.
157 The most recent introduction of the Bill was at House on March 14 2013. See H.R. 1203 by Congressman James Sensenbrenner Jr.
158 See the article on misconduct by some Federal Judges at http://www.nola.com/politics/index.ssf/2013/04/grassley_cites_porteous_impeac.html
159 Chapter 9 of Taiwanese Constitution declares Control Branch as a separate one.
160 Established in accordance with the articles 285 to 287 of the Treaty on the Functioning of the European Union, European Court of Auditors is also considered as a separate entity in a line with Parliament and Commission.
global leader and promoter of Rule of Law may propose its best practices of the Government Control to be adopted as a binding international treaty with monitoring mechanisms on the International level. Internationalizing these practices may bring to global fight with corruption to the new level of efficiency.

As discussed above in some countries the “fourth-independent control branch” of the government factually exists. In some countries those government agencies an independence of those agencies is prescribed on the Constitutional level. Meanwhile, in the US, a unique institutionally constructed “Control Branch”, consisting of US Government Accountability Office and Inspector General Community, with their authorities to act without involvement in the operational activities of the executive agencies, puts those institutions not under the constitutionally recognized tripartite system of the Government, but places these institutions in a same line with Legislative, Executive and Judicial branches of US Federal Government. Moreover, actuality of similar agencies on the US State’s and local government’s level brings to the conclusion that efficiency of these institutions’, with similar to federal agencies authorities has been proved and thus should be considered to be practiced in other countries on both central, regional and municipal levels.

Discussion on the historical and accompanying legal framework development given throughout the paper concludes that statutory reporting requirement and openness of the activities of the “fourth control branch” plays a core role in decision making process of controlling institutions. The obligations of disclosure provided in the legislation ensure accountability of both controlling agencies and those are controlled, identifying an impact of “control branch” on overall operations of the Government.

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161 The full list of the members of Association of Inspector Generals can be found at http://inspectorgeneral.org/directory-of-state-and-local-government-oversight-agencies/