

# Checks and Balances

**‘Checks and Balances’ is a safeguard designed to allow each branch of government to restrain abuse by the other branch.** While not a Check, noted by a \* are requirements of transparency and rules which safeguard a branch from possible retaliation. The philosophy underpinning these are delineated in Federalist Papers nr.51

**‘Separation of Powers’ is a political doctrine wherein the responsibilities and role of different branches of government are kept distinct,** so as to prevent abuses of power. The below are NOT in any way an enumerated list of such powers, although some listed (\*\*) may be ones which directly can act as a Check on the exertion of power by another branch. It is important to remember that **each branch of government can attack the other (in the political sense, of course!) AND each branch of government has a different constituency.**

## Legislative Branch of Government

### *Checks on the Legislature*

(Because it is bicameral, the Legislative branch needs a degree of self-checking.)

- ↳ Bills must be passed by both houses of Congress.
- ↳ All revenue bills originate in the House
- ↳ Neither chamber may adjourn for more than three days without the consent of the other chamber
- ↳ General Accounting Office
  - ↳ The investigative wing of Congress, it has the ability to subpoena documents from the Congress
- ↳ \*All journals are to be published
  - ↳ Allows for transparency/ accountability
- ↳ Congress may discipline members of its own chamber (Article 1, Section 5)
  - ↳ Censure of member
  - ↳ Expulsion of member
  - ↳ Removal of a member from a committee assignment, including from a committee chairmanship.
- ↳ Congress may refuse to seat a member

### *Checks on the Judiciary*

- ↳ Senate approves federal judge nominees
- ↳ Power to impeach judges and remove them from the bench.
- ↳ Power to confirm executive-nominated person as possible Supreme Court Justice (Senate only)
- ↳ Power to initiate proposals for constitutional amendments
- ↳ Power to set courts inferior to the Supreme Court
- ↳ Power to set jurisdiction of courts
- ↳ Power to alter the size of the Supreme Court

### *Checks on the Executive*

- ↳ Vote on whether or not there is evidence of impeachable offences (House only)
- ↳ Trial of impeachment (Senate only)
- ↳ \*\*Selection of the President (House) and Vice President (Senate) in the case of no majority of electoral votes
- ↳ May override Presidential vetoes
  - ↳ But not a pocket veto
- ↳ Senate considers executive nominees
  - ↳ Cabinet and departmental appointments, judges and ambassadors
    - ↳ If they stall, the president may be able to get around them with a recess appointment.
- ↳ Approves treaties (Senate only; two-thirds vote needed)
- ↳ \*\*Votes to approve replacement Vice President (Senate only)
- ↳ \*\*Power to declare war
- ↳ General Accounting Office
  - ↳ The investigative wing of Congress, it has the ability to subpoena documents from the executive
- ↳ Power to allocate funds for the annual budget. (budget proposed by the Executive)
- ↳ Power to enact taxes
  - ↳ Revenue stream affects president’s ability to pursue his/her agenda.
- ↳ Federal law mandates a 60-day waiting period before any major regulatory changes become law
  - ↳ This prevents presidents from pushing new regulations in the final months of their term in office!
- ↳ \*\*President must, from time-to-time, deliver a State of the Union address

## Executive Branch of Government

### *Checks on the Legislature*

- ↳ Veto power
- ↳ Vice President is the President of the Senate (tiebreaking vote if necessary)
- ↳ Commander in chief of the military
- ↳ May do recess appointments
- ↳ Emergency calling into session of one or both houses of Congress
- ↳ May force adjournment when both chambers of Congress cannot agree on when to shut down
- ↳ Executive submits federal budget to the House of Representatives
- ↳ \*Executive compensation cannot be diminished. (protections against Leg.)
- ↳ Can order the Justice Department (executive branch) to not enforce certain laws for which they have jurisdiction.
  - ↳ For instance, the ‘don’t ask, don’t tell’ law passed by Congress in 1994
- ↳ Impoundment – presidential refusal to allow an agency to spend funds as Congress authorized and appropriated.

### *Checks on the Executive*

- ↳ Lose power: Vice President and the Cabinet can vote that the President is unable to discharge his/her duties
- ↳ The President can dismiss any cabinet Secretary or prior appointment for any reason.

### *Checks on the Judiciary*

- ↳ Power to nominate Senate-confirmable judges
- ↳ President may grant amnesty, forgiving an entire class of crime.
- ↳ Pardon power

## Judicial Branch of Government

### *Checks on the Legislature*

- ↳ Judicial review of legislation
- ↳ Impeachment: “Congressional seats are held on good behavior”
- ↳ \*Judicial compensation cannot be diminished (limits possibility of Congressional retaliation.)

### *Checks on the Executive*

- ↳ Judicial review of initiatives, treaties and claims of executive power
  - ↳ Example: Supreme Court has ruled that presidents’ . . .
    1. are not immune from civil Lawsuits while in office.
    2. could not ignore judicial Subpoena while in office.
    3. ‘executive privilege’ does not apply to presidential records.
- ↳ Chief Justice sits as President of the Senate during presidential impeachment proceedings

### *Checks on the Judiciary*

- (Because of the different levels of the court system, there is a degree of self-regulation inherent in the system)
- ↳ A court could overturn the decision of an inferior court whose case goes to it.
  - ↳ Could reprimand a lower court justice.

*The constitution does not dictate that state governments be comprised of three separate branches, akin to the federal government. State governments need only have a republican form of government. Nevertheless, most states have adopted systems of government whereby separation of powers is preserved, with state legislatures, executive governors and state court system*

