

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

