

## **How effective are the checks and balances of the Constitution today?**

Baron de Montesquieu, who had been influenced by John Locke, wrote about the need for separation of powers within the Government; legislative, executive, and judicial. He said that the best way to avoid tyranny is to make sure that nobody belonged to more than one branch of Government. No one branch of Government would be more powerful than another, and all of the three branches would depend on one another. The constitution will outline the powers of each of the branches of Government, and the branches will be able to check the use of the powers of the other branches of Government, this is known as checks and balances.

The three branches of Government; the executive, the legislature (Congress), and the Judiciary, can all carry out checks and balances on each other as outlined in the constitution.

The President of the USA has the power to veto bills passed in Congress, this power is an example of how the executive chamber carries out checks and balances on Congress. This is probably one of the greatest checks that can be attained, Clinton vetoed thirty-six bills in his two terms, a President can stop any bill from becoming law by using a 'Presidential veto', although there is a system put in place to stop the executive overusing this power (kind of like a check and balance of a check and balance) which is that if the President does veto a bill, that bill, with the Presidents suggestions, gets passed back to Congress where a two thirds vote is needed to override the Presidents veto. This check can cause dispute between the two branches, but the President has an informal power known as a 'pocket veto', this comes about because a bill has ten days to be approved or vetoed by the President, if this ten days comes to an end while Congress is adjourned, the bill ceases to exist, this is usually used as a tactic by the President so that he does not lose face. Because of the way that bills are passed through Congress, the President can 'arrange' if you like for the bill to be held up until a time when he can use his pocket veto.

The President can also end a Congressional session, although there are some limitations on when he is allowed to do this, i.e. he cannot say that Congress is to be adjourned on the next day, and in cases of emergency this can be of great use. In opposition to this the President can also call Congress into session in case of an emergency.

The executive also carry out checks and balances on themselves, members of the cabinet and the Vice President have the power to dismiss the President if they feel that the President is not fit to discharge his duties.

The President appoints federal judges to the Supreme Court, and has the power to override their decision with a Presidential pardon, this, in theory, gives the President complete power over the judiciary, but the judiciary can retaliate using its own checks and balances.

The judiciary has the power to a judicial review, this is the power of a court to review the actions of the executive in terms of their constitutionality, this means that the judiciary has the power to decide whether the executive is truly following the constitution, and to check that the actions are constitutional. The Chief Justice also sits as President of the Senate during an impeachment trial of the President.

Judicial review is also carried out as part of the judiciary's powers of checking Congress; the judiciary reads all bills put forward to check that they are compliant with the constitution. Also, the judiciary have the power of interpretation, they hold the power to decide if anyone is breaking the law, and can interpret the laws differently from the way that the other branches have intended them to be.

Congress holds many checks and balances on both the executive and the judiciary, and some of these checks and balances are specific to either the Senate or the House of Representatives. Because this branch is bicameral, there are a number of checks and balances within the legislature, Bills have to be passed through both houses of Congress, this is the most obvious and important, but least noticed checks of the legislature, if the houses disagree on a bill, it does not get passed. Neither house can adjourn for more than three days, without the consent of the other house; this is an example of when the President can use his power of adjournment over Congress if neither house can agree on adjournment.

The House of Representatives has the power to impeach the executive if it is felt that an impeachment is necessary, the Senate then holds the impeachment trial, only two Presidents have ever been dismissed in this way, the first was President Andrew Johnson who was impeached in 1868 after violating the then-newly created Tenure of Office Act. [The second was President Bill Clinton who was impeached on December 19, 1998 by the House of Representatives on grounds of perjury to a grand jury by a 228–206 vote and obstruction of justice by a 221–212 vote. Two other articles of impeachment failed and a second count of perjury in the Jones case by a 205–229 vote, and one accusing President Clinton of abuse of power by a 148–285 vote.](#)

In the case that there is no majority vote in the general election, the House of Representatives select the President and the Senate select the Vice President. Also if there is a two thirds overall vote in Congress, a Presidents veto can be overruled, this power can be hard to achieve but has happened in the past. Congress can amend, block, or reject any legislation put forward by the President; in 2001 Congress amended the education reform bill put forward by Clinton.

The Senate can approve or reject the proposal of treaties, the rejection of the Treaty of Versailles is probably one of the biggest uses of this power, but with only six other minor treaties being rejected since, this power is becoming less effective in checking the executive, and the President seems to be dominant in international affairs.

Congress approve a replacement Vice President should such situation arise, this stops the President from appointing anyone they wish as the Vice President.

The President is required to deliver a State of the Union Address to Congress annually; this is where the President delivers a speech to both houses of Congress reporting the status of the country. This speech allows Congress to check the Presidents intentions and to make sure that they are not too drastic.

The Senate approves the federal judges selected by the President, this checks the quality of the judges put forward to correct any bad decisions the President may have made. The House of Representatives has the power to impeach any of the federal judges, and the trial is held in the Senate. Congress has the power to initiate constitutional amendments and bills, which could make the constitution/law more specific, narrowing the limits of interpretation for the judiciary.

Congress has the power to set courts inferior to the Supreme Court, and in addition to this, it can set the jurisdiction of these courts. The Supreme Court can be altered in size through Congress, allowing them to keep an eye on the judicial interpretations of laws and the constitution.