

The constitutional system of checks and balances does not work in practice. Discuss.

The US constitution is expressed in a single codified document which is not very long but should at least in theory cover a variety of issues to do with the lives, rights and liberties of citizen's everyday. Written constitutions have been known to be rigid and inflexible, therefore, US society is still influenced by the principles that led to its establishment over 200 years ago. It is therefore questionable as to whether a system which was devised over such a long a period of time should still without any major amendments work the political system today by the beliefs and attitudes present at the time in history.

The framers took inspiration from the French philosopher Baron De Montesquieu who stressed the importance of the separation of powers. He believed that the three different parts of government and their powers should be separate but could only be able to check and balance the power of others. They intended to achieve by this limited government. The intentions were clear to achieve a limited government and give the citizens fundamental rights and freedoms. For example when in 1992 Al-Gore was elected vice president he had to resign from the senate. Although it is right to say that the framers didn't really set up a federal government with a separation of powers but more a separation of institutions to have those powers to be able to check and balance the other. The checks are exercised by each branch of the federal government, the executive, legislature and judiciary on the other two branches.

The president who is a member of the executive has been given the power to recommend legislation to congress, also known as the legislature. The recommendations are made annually at the beginning of the year in what is known as the State of The Union Address. The president delivers this speech to both the House of Representatives and the senate and the 9 justices of the Supreme Court, it is broadcasted on national television and is more or less the presidents opportunity to lay out his legislative agenda as for example did G.W. Bush in his state of Union Address in January 2002 where he tried to get congress to focus on the so-called war of terrorism and his budget priorities. However, the legislature also have the power to amend, block or reject items of legislation recommended by the president, as was in 2002 when president Bush's education reform bill was passed but with significant amendments made to it.

Although, the president has the right to veto bills passed by congress as was done by President Clinton 36 times whilst in power. However, this can be overridden by a $\frac{2}{3}$ majority in both houses of congress. Clinton may have vetoed 36 bills by congress yet they overrode 2 of his vetoes e.g. the one on the 1995 securities bill.

The executive has quite limited powers of checks and balances in comparison to that possessed by the legislature because the framers were anxious of the powers held by a single executive Mr. President. However the powers that the president may actually possess have alternatives to it and can be overridden by

the legislature therefore there may be checks present in theory but in practice they are somewhat limited.

Congress possesses quite a significant power; the power of the purse, where congress has to vote on the money that the president wants to spend on his policies. This enables them to limit what the president can and can not do. The legislature has further powers which are not as significant and have over time fallen into disuse. Congress can declare war however, the last time this was used was in 1941, the war against Japan.

Although, congress does have a few more significant powers to check and scrutinise the actions of the executive, they have the power to ratify the treaties negotiated by the president, this requires a $\frac{2}{3}$ majority. For example the Test Ban Treaty was rejected; it was 14 votes from ratification. Not only does congress confirm treaties but also appointments made by the President, be it for high judicial posts or heads of important agencies i.e. the FBI. A simple majority is required for confirmation yet it still ensures congress has a say in such great matters. For example President Reagan's nominee Robert Bork was rejected from joining the Supreme Court in 1987.

The president himself and other members of the executive's actions and policies can be investigated, as was done in 2001 over Bush's handling of national security issues before and after September 11th. Congress can go further if they find that a member of the executive has acted improperly. The House of Representatives tend to be the ones who impeach and the accused will then be tried by the Senate, and if found guilty then removed. As was Clinton impeached tried and removed for perjury and obstruction of justice. Overall the legislature possess more significant powers to check the executive, of which most of them have and can be put to use.

The legislature also has powers to check and scrutinise the judiciary, they can propose constitutional amendments to overturn a decision of the Supreme Court even though this requires super majorities it is still viewed upon as significant if say congress does pull together the required majority therefore they change what is disagreed upon. The legislature also has the power to impeach a member of the judiciary on when felt they have misbehaved then later try them and if convicted remove them as was done to Walter Nixon, a Federal Judge, for perjury.

The executive appoints all judges whether it be the Federal Judges or the Supreme Court Justices, this gives them the chance to choose judges with a similar beliefs to them and mould the outlook of the court system for years to come. However, they have the power of pardon, which is highly controversial for example President Nixon was pardoned by his successor President Ford over the Watergate Scandal.

Finally, the Judiciary has one main yet significant power over both the Executive and the Legislature, the power of Judicial Review. This enables them to declare acts of congress unconstitutional and actions of members of the executive unconstitutional. For example this was illustrated in the case of United states v. Richard Nixon, when President Nixon was asked to hand over the tapes following the Watergate Scandal.

Ultimately the checks that all 3 branches possess over the other have important consequences; they encourage bipartisanship between the president and congress. This enables both the two major parties to co-operate when say one of them is in control of Congress and the other the Presidency. As a result of this George Bush in 2001 managed to achieve his education reforms as he worked closely with the Democratic leader of Congress Senator Edward Kennedy. The spirit of Partisanship proved against the success of President Clinton as he failed to enforce his Health Reform Bill.

However, it is felt that there may be a result of gridlock, where the president and the senate don't really get much done and for example the senate ends up blocking or rejecting proposals from the executive. This was clear as President Clinton and the Republican controlled congress formed an impasse and as a result due to the lack of finance parts of the Federal Government had to be shut down.

Although, it has been said that the divide in government is actually an advantage as both parties take on a more partisan approach this leads to a more effective government. It is felt that when the president and congress are of the same party legislation, treaties, appointments etc are pushed through without much real scrutiny however, with the divide in government bills, legislation will all be more carefully monitored and scrutinised.

However, it has been argued that the divide in government isn't always an advantage and can actually result in a political backlash for example it was felt that the impeachment proceedings conducted against the Democratic President Clinton by a Republican congress were highly politicised.

Yet overall despite the minor drawbacks the system still stands firm. The system of checks and balances has proved useful, therefore to an extent the intentions of the Framers when setting up the constitution has been met.