

Checks & Balances

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Notes

1) Executive Checks: The executive branch refers to the President, the White House Staff, and the departments and agencies empowered to “execute”, or put into effect, the legislation passed by the legislative branch.

2) veto bills: The President can nullify or veto a law passed by Congress, though Congress can over-ride a veto with a 2/3 majority vote in both houses of Congress. Early American Presidents did not often use veto power. Washington vetoed two bills. Between Presidents Madison and Lincoln, the average number of Presidential vetoes was 4. In the late 19th and 20th Century, the veto became more common, especially when Congress and the White House were controlled by two opposing political parties. Grover Cleveland, for example, issued over 400 vetoes (1885-89 and 1893-97).

3) pardon criminals: The power to pardon convicted criminals, setting them free, serves as an executive check on the judicial branch. If the courts unfairly convict someone, the President can pardon them or grant clemency (a lesser penalty). Contemporary Presidents receive hundreds of petitions for pardon each year, of which they typically grant a small number. The most famous pardon was issued by Gerald R. Ford, who pardoned President Nixon after his resignation, insulating the fallen President from criminal prosecution for infractions associated with the Watergate scandal.

4) appoint justice and judge: The right to appoint Supreme Court justices and federal judges is a powerful executive check on the judiciary, especially since Supreme Court justices serve terms without a time limit, until retirement.

5) Legislative Checks: Legislative checks are Constitutional means by which Congress can limit the power of both the executive and judicial branches. Some legislative checks are shared powers of both chambers of Congress, such as the veto override. Others are the prerogatives of either the Senate or the House of Representatives. For example, the Senate confirms Presidential appointments.

6) impeach and convict: The Congress may impeach Presidents, Vice Presidents or Supreme Court Justices—so this power allows the legislative branch to check both the executive and judicial branches. Impeachment, the responsibility of the House of Representatives, is an indictment. The House decides if there is enough evidence of wrongdoing to justify a trial. If there is, the accused is impeached. According to the Constitution, a President may be impeached for “high crimes and misdemeanors.” The trial itself is held in the Senate. It may lead to conviction and removal from office. President Andrew Johnson was impeached in 1868 but the Senate failed to convict by one vote. President Clinton, during the Monica Lewinsky affair, was impeached by the House and put on trial in the Senate. The Senate did not convict Clinton so he served the remainder of his term as President.

7) override veto: The power to override a Presidential veto is a legislative check on the executive. Since a 2/3 majority in both houses of Congress is required, veto overrides are not common.

8) confirm appointments: The Senate holds hearings to meet and question senior Presidential appointments including the cabinet (Secretaries of the executive departments), Supreme Court Justices, ambassadors and top military commanders. In this way, the executive receives the “advice and consent” of the legislative branch to make top appointments.

9) set up courts: The power to set up and organize the structure of the federal court system is a legislative check on the judicial branch. The basic system is a hierarchy with appeals moving from lower to higher courts. The Supreme Court makes final decisions.

10) judicial review: The power of judicial review allows the Supreme Court to nullify the acts of the executive or legislative branches if they are found to be unconstitutional. This powerful judicial check is not mentioned in the Constitution. It was established by a precedent set in the Supreme Court’s *Marbury v. Madison* case in 1803.

11) interpret rules, procedures and the Constitution: The court system is responsible for the resolution of disagreements regarding the administration of all federal rules and policies.

12) three branches: The principle of “separation of powers” has deep roots in Western History. Aristotle, John Locke, and the French philosopher Montesquieu, all advocated a system of checks and balances. Montesquieu had the most direct influence on the framers of the Constitution. Some Native American tribes had systems of separation of powers. Ben Franklin and other founding fathers learned about checks and balances, in part, from the Iroquois. James Madison, the chief architect of the Constitution, established the mechanisms by which each branch can check and balance the others. Madison wrote: “(T)he great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition.” (*Federalist 51*)

Songwriter & Vocals: Lance Fialkoff; Vocals-Erica Quitzow; Guitar, Bass & Beat: Gary Levitt~Young Love Studio, Brooklyn, NY © 2017. All Rights Reserved. Musical Media for Education (MME)