

CHECKS, BALANCES, & THE SEPARATION OF POWERS

SWKT: The powers allocated to Congress, the president, and the courts demonstrate the separation of powers and checks and balances features of the U.S. Constitution.

After their experiences with King George III, the Framers of the U.S. Constitution created a system of checks and balances to limit the power of the federal government. The system of checks and balances was designed so that no branch of the federal government—legislative, executive, or judicial—is totally independent from the other two. Each branch has the power to "check" or curb the other branches' powers. This keeps the government in "balance."

The concept of checks and balances dates back to the Greeks. Aristotle favored a "mixed" government made up of the monarchy, the aristocracy, and the people. The purpose was to ensure that government power would not be used in an abusive manner.

Another way to look at checks and balances is to think of the federal government's powers being separated into three sections. The French philosopher Baron de Montesquieu advocated the separation of powers in the mid-18th century. He believed that distributing government power to many different branches and layers of government helped to prevent tyranny. Montesquieu's *The Spirit of Laws* (1748) served as the blueprint for the three-part system of executive, legislative, and judicial powers adopted by the Framers in 1787.

The Framers of the U.S. Constitution didn't trust government and were determined to limit the power of the new national government. They didn't want to create a government in the United States that could behave like the monarchy they had just broken from. The first way to check the national government's powers was to give powers to states. The Framers then separated the national government into three branches: the legislative branch, responsible for making the law; the executive branch, responsible for carrying out the law; and the judicial branch, comprised of the courts.

The Legislative Branch

The legislative branch, composed of the House of Representatives and the Senate, has enormous power over the executive branch. One of Congress's key powers is the power of the purse: Congress oversees all matters related to spending and revenue. Because the federal budget must originate in the House of Representatives and be passed by both the House and the Senate, any programs that the president wishes to enact must be backed by Congress.

In addition, while the president is commander in chief of the U.S. military, it is Congress that must declare war. This is meant to limit the president's power to engage in military actions.

Congress can also refuse to approve an international treaty that the president has worked out with a foreign nation and refuse to approve a president's nomination to the federal courts. Such was the case in 1987, when President Ronald Reagan nominated Robert Bork for the U.S. Supreme Court. Bork's nomination was rejected by the Senate because of his conservative positions.

If the president vetoes a bill, the legislative branch has the power to overrule the veto with a two-thirds vote from both chambers. This legislative power was repeatedly exercised during the administration of Andrew Johnson. Johnson sought a lenient attitude toward the South after the Civil War, so he vetoed 29 bills. Johnson was overruled 15 times by a Congress that favored a more aggressive approach toward the South.

Congress also has power over the judicial branch. The legislative branch establishes the lower courts, and it has the authority to nullify judicial decisions by proposing amendments to the U.S. Constitution. For example, after the Supreme Court overturned a tax on personal and corporate income in *Pollock v. Farmers' Loan & Trust Co.* (1895), Congress approved the Sixteenth Amendment, allowing the federal government to levy unapportioned

taxes on income. Congress also has the authority to impeach and remove judges from the bench if they overstep the boundaries of the Constitution.

The Executive Branch

At the top of the executive branch is the president of the United States. The Constitution has given the president power to check the legislative branch. The president can veto a law passed by Congress. He or she can order Congress to meet at a special session, if necessary. Such a session was called by President Franklin D. Roosevelt in order to gain Congress's approval for his New Deal programs to provide relief from the Great Depression.

The president may also take administrative action by issuing executive orders. Executive orders carry the weight of law, but their reach is limited. They are most frequently used to implement treaties, constitutional provisions, and statutes, but they may also be used to set administrative policy within the federal bureaucracy if the president feels Congress is not moving quickly enough on a certain matter. For example, in 2014, President Barack Obama signed an executive order barring federal contractors from discriminating against people based on their sexual orientation or gender identity.

The president checks the power of the judicial branch by appointing judges to the bench. The Constitution does not include requirements for federal judicial appointments, but presidents typically consider a candidate's experience, constitutional philosophy, and—controversially—political affiliation and ideology.

The Judicial Branch

The judicial branch oversees the actions of both the president and Congress. The judicial branch has the authority to declare executive actions or laws that Congress and the president have passed unconstitutional if it determines that the law does not conform to the spirit of the Constitution. The judicial branch has the authority and the responsibility to declare those laws invalid.

The Supreme Court's application of judicial review—the authority to declare a law or action unconstitutional—is not found in the U.S. Constitution. The Judiciary Act (1789) provides for judicial review, but the Supreme Court did not assert this power until its ruling in *Marbury v. Madison* (1803). Judicial review is not only applied to the executive and legislative branches, but also to the rulings of lower courts and its own previous decisions. This ensures that no government body is above the Constitution.

