

Lecture 5

The Three Branches and the Concept/ Mechanisms of Checks and Balances

The Separation of Powers is a key element in the US system of government. As devised by the framers of the Constitution, it was designed to do one essential thing: to prevent any one branch to abuse its powers. Based on their experience, the framers of the Constitution shied away from giving any branch of the new government too much power. The separation of powers provides a system of shared and counter-balanced powers known as **Checks and Balances**. The American constitution provides for this notion in every stage and aspect of the US political system.

Three branches are created in the Constitution. The Legislative Branch, composed of the House and Senate, is set up in Article 1. The Executive Branch, composed of the President, Vice-President, and the departments and federal agencies, under presidential authority, is set up in Article 2. The Judicial Branch, composed of the federal courts and the Supreme Court, is set up in Article 3.

Each of these branches has some powers, and each of these powers is counter-balanced, limited, or checked, by another branch. Additionally, checks and balances exist within the same branch and constitutional power (between the House and the Senate for examples). Finally, this notion of checks and balances works horizontally (between the different branches of the central/federal government) and vertically (with regard to the relationship between the central government and state governments).

For example, at the level of the central government, the President appoints judges and departmental secretaries.; but these appointments must be approved by the Senate. The Congress can pass a law, but the President can veto it. The Supreme Court can rule a law to be unconstitutional, but the Congress, with the States, can amend the Constitution.

By forcing a branch to be accountable to the others, no one branch can monopolize enough power to become dominant.

The Legislative Branch and Its Powers

The United States Congress exercises checks on both the Executive and Judiciary Branches.

Congressional Checks on the Executive

- The House has the power to Impeach the President or other members of the Executive (Cabinet members, presidential appointees,...).
- The Senate has the power to conduct the trial of impeachments.
- The Congress has theoretically the power to select the President (House) and Vice President (Senate) in case there is no majority of electoral votes.
- The Congress may override Presidential vetoes
- The Senate can approve or reject departmental appointments
- The Senate can approve or reject treaties and ambassadors
- The Congress can approve the replacement of the Vice President
- The Congress has the power to declare war
- The Congress has the power to enact taxes and allocate funds

Congressional Checks on the Judiciary

- The Senate approves federal judges
- The Congress has the power to initiate constitutional amendments
- The Congress has the power to set courts inferior to the Supreme Court
- The Congress has the power to set jurisdiction of courts
- The Congress has the power to alter the size of the Supreme Court

Congressional Self-Checking. Because it is bicameral, the Legislative branch has a degree of self-checking. For example, bills must be passed by both houses of Congress.

The Executive Branch and Its Powers

Executive Checks on the Legislature

- The President has a veto power
- The Vice President is President of the Senate
- The President is Commander in chief of the military
- The President can issue emergency calling into session of one or both houses of Congress
- The President may force adjournment when both houses cannot agree on adjournment

Executive Checks on the Judiciary

- The President has the power to appoint judges
- The President enjoys the power to pardon

Executive Checks on the Executive

- Vice President and Cabinet can vote that the President is unable to accomplish his duties

The Judicial Branch and its Powers

Judicial Checks on the Legislature and the Executive

- Judicial review
- Chief Justice sits as President of the Senate during presidential impeachment

References

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