CHECKS AND BALANCES

An eighteenth-century political theory held that liberty is maintained in a democracy through the ‘virtue’ of the people; in other words, the character of the people, rather than institutional arrangements, will keep them free. In *Federalist 10*, James Madison disputed this view, building instead a theory of checks and balances. Because it is impossible to eliminate the causes of ‘faction’—sectionalism, party rivalries, personal self-interest, and ambition—the Constitution was devised to check its effects— as Madison put it, ‘to break and control the violence of faction.’

Madison’s contribution to the Western political tradition was the creation of an extended federal republic: by ‘taking in a greater variety of parties and interests….you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens.’ And to ensure that those who are elected do not easily abuse the public trust, their authority will be fragmented by separating the power given over to each office.

The American system of checks and balances both results from and supports the constitutional rule of Separation of Powers. The great powers of government—legislative, executive, and judicial—are disbursed among three branches. But these parcels of power cannot be rigidly separated or there would be no way that one could control the other. In *Federalist 51*, Madison found that ‘the 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 the encroachments of the others……Ambition must be made to counteract ambition…In all the subordinate distributions of power…the constant aim is to divide and arrange the several offices in such a manner that each may be a check on the other.’ By sharing power, each branch can curtail its potential abuse by others.

The Constitution achieves this checking balancing function in several ways. To make a law, the two houses of Congress, which are elected by different constituencies, must concur on the exact wording of a bill; either can check the other. The president, through the veto, has a major share in the legislative power
to enact law. Because he may reject its enactments, Congress must heed the president’s agenda. The president’s checking power may in turn be checked; by a greater plurality than the original vote (two thirds instead of simple majority), Congress may override a veto. The veto power works in reverse too: although the president has the primary power of negotiating treaties and nominating government officials, the Senate may veto treaties and appointments.

Likewise, the president has the primary responsibility for carrying out the laws, but Congress has considerable power to influence how government will operate through its power over the budget, it oversight and reform powers, and its power to establish the various offices of the government.

The courts too, have a share in the power. They sit to apply the law in particular cases; and through their power to interpret the law and the Constitution itself, they can check both Congress’s enactments and the president’s enforcement policies.

But both Congress and the president, in turn, may exert control over the courts. The president names all the federal judges (although, the Senate may veto), and Congress may restrict the types of cases that the courts may hear.

Finally, despite the president’s power to appoint, Congress may remove any federal official, including a member of the Supreme Court, through impeachment. Even this power is divided: the House may impeach, but only the Senate may convict.

Checks and balances are not limited to powers within the federal government. The Constitution provides for a checking and balancing between federal and state governments as well. Art. VI declares that the Constitution, federal law, and treaties are the ‘supreme law of the land,’ superseding any conflicting state law. This article ensures that the states may not act to undermine national law and policy. But the states are not without power themselves, though their influence has been reduced since the time when state legislatures chose US senators.

Most important of all are the checks and balances that result from elections,
which ensure that the government is controlled not merely by its internal parts but by external watchdogs—the people themselves.