

Lesson 2: The Constitution's Checks and Balances

Lesson Overview and Student Learning Objectives

The purpose of this lesson is to focus on the place and importance of the system of checks and balances in the U.S. Constitution. The Background Essay for this lesson distinguishes the concept of checks and balances from the separation of powers investigated in an earlier lesson. It touches on the thinking of James Madison and other Founders about the importance of checks and balances as a means of restraining governmental power and protecting the liberties central to the meaning and purpose of the American republic. The activity for the lesson introduces the concept of judicial review and asks students to look closely at one important Supreme Court case. The case raises questions in a dramatic way about the place of checks and balances in the functioning of the federal republic the Constitution brought into being.

When the lesson is completed:

- Students will be able to define the concept of checks and balances and will have a sense of what each of these two terms means.
- Students will be able to identify several of the key checks and balances embedded in the Constitution and will appreciate the importance of these features in establishing an effective yet limited government.
- Students will understand the concept of judicial review and will consider two sides in a case in which the Supreme Court acted to check the President's actions in order to maintain the separation of powers.

Teacher Directions

Before this class meets: As homework or during an earlier class period, have students read the Background Essay “The Constitution’s Checks and Balances” and the three sources for this lesson. (Some of this reading could be done during class if it seems time will permit.) The Background Essay deals with the checks and balances the founders believed to be an essential feature of the U.S. Constitution. The three sources all have to do with the 1952 Supreme Court case *Youngstown Sheet & Tube Co. v. Sawyer*, which deals with Legislative versus Executive powers. The case also calls attention to the Supreme Court's power of judicial review.

In class: Briefly discuss all these readings and address any questions the students have about them. Then provide each student with a copy of the Student Activity sheet. This poses four questions about *Youngstown Sheet & Tube Co. v. Sawyer*. Have each student write brief answers to these questions. Leave 15 minutes or so for students to share their answers in an all-class discussion.

Extension Activity: Ask a small group of students to read and discuss *Federalist 51*. Have the group choose two or three short passages from it that best illustrate what Madison means by the phrase “ambition must be made to counteract ambition” Have the group prepare a brief report to the class explaining the importance of *The Federalist 51* to an understanding of why the Founders thought checks and balances so important a part of the U.S. Constitution.

Suggested Grade Level:

12th grade

Time to Complete:

One class period plus prior reading as homework

Terms and Phrases to Understand

(In order of their appearance in the lesson material.)

- **plaintiff**—person or entity that files a lawsuit against another in a court of law.
- **republic**—a government ruled by a group of representatives of the larger body of citizens.
- **veto**—the right of one branch of government to cancel or overrule the actions of another branch.
- **judicial review**—the ability of a court to review actions of the government to determine if they violate the U.S. Constitution.
- **null and void**—not legally valid or enforceable.
- **injunction**—a judicial order restraining a person or group from taking an action or an order telling a person or group to take a specific action.
- **statutory authorization**—a power given to an official or agency by a law passed by the legislature.

Sources to Read

This lesson’s Background Essay: “The Constitution: Why a Separation of Powers?”

The following are located in the “Sources for this Lesson” section and fully at the indicated link.

- **Source 1:** Background Information on *Youngstown Sheet & Tube Co. v. Sawyer*.
- **Source 2:** From Justice Hugo Black’s Majority Opinion in *Youngstown Sheet & Tube Co. v. Sawyer*. Available from Justia at: <https://supreme.justia.com/cases/federal/us/343/579/>.
- **Source 3:** Part of Justice Fred Vinson’s Dissent in *Youngstown Sheet & Tube Co. v. Sawyer*. Available from Justia at: <https://supreme.justia.com/cases/federal/us/343/579/>.

- **Optional:** *The Federalist Papers, No. 51*. Available from Yale Law School's Avalon Project at: https://avalon.law.yale.edu/18th_century/fed51.asp.

Standards Met by this Lesson.

American Birthright Learning Standards: Grade 12, No. 3; Grade 12, No. 13; Grade 12, No. 21; Grade 12; No. 22; Grade 12, No. 24.

Sources for Teacher Enrichment

- M. E. Bradford, *Original Intentions: On the Making and Ratification of the United States Constitution* (University of Georgia Press, 1993).
- Bruce Frohnen, *The American Republic: Primary Sources* (Liberty Fund, 2002).
- Donald S. Lutz, *The Origins of American Constitutionalism* (Louisiana State University Press, 1988.).
- James Madison, *Federalist 51*, in *The Federalist Papers* (Dover Thrift Editions, 2014). Also available from Yale Law School's Avalon Project at: https://avalon.law.yale.edu/18th_century/fed51.asp.
- Charles de Montesquieu, *The Spirit of Laws* (Cambridge University Press, 1989).
- *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). Available from Justia at: <https://supreme.justia.com/cases/federal/us/343/579/>.

Background Essay

The Constitution's Checks and Balances

Americans often refer to their own government as a “democracy.” However, the Founders were not in favor of democracy in any pure form. Looking back to Athens in ancient Greece they saw the direct rule of Athenian citizens as chaotic and conflict-ridden. Above all, they feared democracy would lead to a “tyranny of the majority.” That is, a majority of citizens would trample on the rights of minorities and on the liberty of the individual. To prevent this, the Founders instead created a complex constitutional republic, not a democracy.

A republic does provide for some degree of indirect democracy. That is, citizens elect a small number of representatives to a legislature which then makes decisions for them. The expectation is this small group of representatives will be knowledgeable and will deliberate carefully in coming to decisions.

However, as bodies directly elected by the people, legislatures can still easily impose a tyranny of the majority. Americans at the time worried about this in part because of how powerful several state legislatures were after the Revolution. The Founders believed that determined majorities in some of these legislatures were in fact riding roughshod over the rights of others. One way they hoped to correct this was through the strict separation of powers into a legislative branch to make the laws, an executive branch (the President) to carry out the laws, and a judicial branch to enforce the laws through cases in the courts. This idea of separation of powers was not a new concept to the Founders at the time of the American Revolution. For example, they were long familiar with Baron Charles de Montesquieu’s writings in the mid-1700s in *The Spirit of the Laws* on separation of powers.

In the Constitution, the powers of the three branches are not entirely separate. They overlap in many ways. For example, the President can report to Congress on the state of the nation, and he can recommend new laws for them to consider. In this and many other ways, the branches are able to work together. However, the Constitution also provides many ways by which one branch can prevent another branch from doing as it wishes. The phrase “checks and balances” refers to these ways.

One reason for these checks and balances is to make it hard for a tyranny of the majority to occur. However, there is another reason. The Founders did not only fear that a majority of citizens might abuse their power and impose a tyranny. They also feared that the government itself might impose a tyranny. As James Madison famously put it in *Federalist 51* (one of the essays in *The Federalist Papers*), “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” The checks and balances were ways to do both things.

What were the “checks”? What were the “balances”?

The President can check the power of Congress by vetoing the laws it passes. However, Congress can pass a law despite a presidential veto with a two-thirds vote of both houses. Congress also has the authority to remove a president by impeaching him. The President negotiates treaties with other nations, but the Senate must approve them by a two-thirds vote. The President also appoints judges and top officials of his executive departments, but only with the advice and consent of the Senate. This appointing power gives both branches some control over the judicial branch. However, judges are very independent because of the “good behavior” tenure they enjoy, which means they can only be removed by impeachment for offenses such as criminal or treasonous acts. Politically divisive rulings do not meet this standard. If they wish, they can serve for life. This makes it easy for them to act independently in interpreting the laws. The Supreme Court has often checked the other branches by its power of judicial review—that is, its power of deciding whether acts by the President or Congress are constitutional and can be allowed to take effect.

When people speak of “checks and balances” they often think these two terms mean the same thing. However, some historians say the term “balances” refers to something else, to features that regulate the pace of change and keep the government from falling under the control of a suddenly aroused or angry majority. One such balance is maintained by the differing terms of office for the various parts of the federal government. Every two years, all members of the House of Representatives are elected to serve two-year terms. Senators serve six-year terms, and only one-third are elected every two years. This makes it hard for any suddenly arising movement to win over both the Senate and the House all at once. Meanwhile, Supreme Court Justices serving for life would also not be a part of any sudden majority seeking radical change. Senators are elected by entire states—and at first, they were chosen by state legislatures, not voters directly. (The 17th Amendment changed that in 1913.) Representatives are elected by much smaller districts. This means they are likely to respond to different groups of voters with different sorts of interests. These balancing factors make quick action by the entire government less likely. The Founders hoped this would produce a steadier, more thoughtful process of decision-making.

The Supreme Court has played a central role in making the Constitution’s checks and balances work. It does this by a power that is implied though not clearly defined in the Constitution itself—the power of judicial review. This is the Court’s power to decide whether a legislative or executive act violates the Constitution. If it decides the act does violate the Constitution, it declares that act “null and void.” This means the act is not legally valid and cannot be carried out. In the Student Activity for this lesson, you will consider two alternative views of a case in 1952 in which the Court did just that by ruling against an action President Harry Truman took. According to the Court, that action did violate one of the central checks the Constitution imposes on the President.

Sources for this Lesson

Source 1: Background Information on *Youngstown Sheet & Tube Co. v. Sawyer*

Judicial review is a powerful “check” by which the Supreme Court can limit the power of the other branches. Among other things, it can keep them from violating the Constitution’s separation of powers. A good example of this was a case brought before it in 1952. By then, thousands of American soldiers had been fighting in Korea for two years. They depended on huge supplies of weapons and equipment, most of which the defense industries could not build without a steady supply of steel. In the spring of 1952, the steel mill owners and the steel workers were locked in a major dispute over wages. In April, the union announced it would strike and shut down most of the major steel companies. President Truman decided that he had to act to prevent shortages he regarded as a terrible threat to the war effort and the nation’s security. He therefore issued Executive Order 10340 directing his Secretary of Commerce Charles Sawyer to take over the steel mills and keep them running. Truman acted without asking Congress to authorize what he had done.

The steel companies went to court, and as a result a district judge issued an injunction ordering the government to return control of the plants to their owners. The government appealed the case, and the Supreme Court soon agreed to hear it. *Youngstown Sheet and Tube Company* was one of the steel companies bringing this case, which is therefore called *Youngstown Sheet & Tube Co. v. Sawyer*. By a 6-3 vote, the Supreme Court ruled that the president could not seize the steel mills without an act of Congress granting him that authority.

Source 2: From Justice Hugo Black’s Majority Opinion in *Youngstown Sheet & Tube Co. v. Sawyer*

Usually when the Supreme Court rules in a case, one Justice writes a “majority opinion” explaining the reasons for the Court’s ruling. Sometimes, other Justices will write “concurring opinions” agreeing with the ruling but making other points about it. If any Justices vote against the ruling, one or more of them may write a “dissenting opinion” explaining why they opposed the Court’s ruling. Usually, all these opinions are long. They cite previous Court decisions and raise a great many points. This passage is just one small but key part of Justice Hugo Black’s majority opinion for *Youngstown Sheet & Tube Co. v. Sawyer*. From the entire Supreme Court decision “*Youngstown Sheet & Tube Co. v. Sawyer*,” 343 U.S. 579 (1952). The entire decision is available from Justia at: <https://supreme.justia.com/cases/federal/us/343/579/>.

The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself. There is no statute that expressly authorizes the President to take possession of property as he did here. Nor is there any act of Congress to which our attention has been directed from which such a power

can fairly be implied. Indeed, we do not understand the Government to rely on statutory authorization for this seizure. There are two statutes which do authorize the President to take both personal and real property under certain conditions. However, the Government admits that these conditions were not met, and that the President's order was not rooted in either of the statutes. The Government refers to the seizure provisions of one of these statutes (§ 201(b) of the Defense Production Act) as “much too cumbersome, involved, and time-consuming for the crisis which was at hand” . . .

The contention is that presidential power should be implied from the aggregate of his powers under the Constitution. Particular reliance is placed on provisions in Article II which say that “The executive Power shall be vested in a President . . .”; that “he shall take Care that the Laws be faithfully executed”, and that he “shall be Commander in Chief of the Army and Navy of the United States.”

The order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war. Such cases need not concern us here. Even though “theater of war” be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities.

Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad.

Source 3: Part of Justice Fred Vinson's Dissent in *Youngstown Sheet & Tube Co. v. Sawyer*

Chief Justice Vinson wrote a long dissent. He stressed the then current dire wartime situation in which the President needed to act quickly to protect the nation. In his view, the President as Commander in Chief has the authority to do what Truman did. The passages here are a small portion of Justice Vinson's long dissent for *Youngstown Sheet & Tube Co. v. Sawyer*. After these passages, Vinson listed many actions other Presidents had taken before getting the approval of a specific act of Congress, including several actions taken by President

Roosevelt during the nation's involvement in World War II. From the entire Supreme Court decision *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). The entire decision is available from Justia at: <https://supreme.justia.com/cases/federal/us/343/579/>.

The Plaintiffs [the steel companies bringing this case] do not remotely suggest any basis for rejecting the President's finding that any stoppage of steel production would immediately place the Nation in peril. . . . The Union and the plaintiffs bargained for 6 months with over 100 issues in dispute—issues not limited to wage demands, but including the union shop and other matters of principle between the parties. At the time of seizure, there was not, and there is not now, the slightest evidence to justify the belief that any strike will be of short duration. The Union and the steel companies may well engage in a lengthy struggle. Plaintiffs' counsel tells us that “sooner or later” the mills will operate again. That may satisfy the steel companies and, perhaps, the Union. But our soldiers and our allies will hardly be cheered with the assurance that the ammunition upon which their lives depend will be forthcoming—“sooner or later,” or, in other words, “too little and too late”. . . .

A review of executive action demonstrates that our Presidents have on many occasions exhibited the leadership contemplated by the Framers when they made the President Commander in Chief, and imposed upon him the trust to “take Care that the Laws be faithfully executed.” With or without explicit statutory authorization, Presidents have at such times dealt with national emergencies by acting promptly and resolutely to enforce legislative programs, at least to save those programs until Congress could act. Congress and the courts have responded to such executive initiative with consistent approval.

Student Activity

Instructions to the Student: Read the three sources provided for this assignment. Then read the four questions below. Share your views about the questions and ask your teacher for any clarifications you feel you need. Then in a few brief sentences, answer each question. Use these notes to help you to take part in an all-class discussion about the case of *Youngstown Sheet & Tube Co. v. Sawyer*.

1. Justice Black thinks President Truman violated one of the Constitution's key "checks" meant to limit the powers of each branch of the government. Explain which check he means and how he thinks the President violated it.
2. Justice Vinson in his dissent says a national emergency gives the president the right to act on his own to meet that emergency. He refers to two parts of the Constitution—one establishing the President as "Commander in Chief," and one saying the President must "take care that the laws be faithfully executed." Why do you think he believes these give the President the right to act as he did in this case?
3. Do you think Justice Black deals with the points Justice Vinson makes in his dissent? Explain your answer.
4. Do you think the Supreme Court's majority opinion in this case was correct, or do you think the dissenting opinion made the better argument? Explain your answer.