

Lesson Twenty-Five

Checks And Balances

LESSON IDEA

To show how the Constitution, through a complex latticework of checks and balances, was specifically designed to prevent the misuse of government power.

PREPARATION

Make enough copies of the Washington quote on page four to distribute to each member of the family after this lesson. Study the section of *Your Rugged Constitution* suggested in "During The Week" and decide how to use it for home study.

THE CONSTITUTION of the United States, as adopted by the 13 former British colonies, created a unique system of government. It shocked the rulers of Europe. Never, they claimed, had a government (theirs) been so badly treated. The Americans, they fumed, had dissected its power, then placed the parts in opposition to one another. They hampered and hamstrung it until it looked like a giant pinned down by myriad small ropes. How could they expect it to function?

Why was the Constitution such a shock to the rulers of Europe? Why did they not adopt a similar document for their own countries? [Encourage everyone to express an opinion.]

Government, in the minds of kings and court ministers, was meant to entail virtually unlimited power, and the authority do about as it pleased to the governed. It was to be serve as a divine powerhouse driven by kings appointed as Earthly emissaries of God Himself. Should menial subjects fail to appreciate a kings' exalted position as the sources of wisdom, severe physical punishment would often follow. This could mean the firing squad, guillotine, hangman's nooses, prison, and/or beatings. While it may never have occurred to some rulers that their policies and actions were reprehensible, and merely served to bolster their own lust for power, few if any of those beaten, imprisoned, and otherwise mistreated had any such delusions.

NEITHER DID George Washington. He was fully aware of the tendency of government to exceed its proper bounds and brutally abuse its powers. "Government," he believed, "is not reason; it is not eloquence; it is force! Like fire, it is a dangerous servant and a fearful master."

Do you think that Washington's conclusion was justified? Why did he compare Government to fire? Why is fire a dangerous servant? When is it a fearful master? [Encourage discussion. Make sure that everyone understands why powerful governments based on communism, Nazism, fascism, socialism, or other big-government "isms" tend to become as fearful to their subjects as raging forest fires become to the wildlife in their path. Also, make the point that even when a government is held in check, as the American government was by the Constitution for many decades, it is nevertheless similar to a bonfire serves as a necessary and beneficial source of heat and light, but can quickly become a conflagration if left unattended and unchecked.]

Like Washington, many delegates to the Constitutional Convention wanted no part of creating yet another "fearful master." They believed that government should be a servant of the citizenry; a legal apparatus that would act as a referee between individuals and groups, keeping the rules fair and the game clean, but leaving citizens free to enjoy liberty in their own way, provided only that they did not infringe the liberties of others. Government was not to protect individuals from the folly of their own mistakes (an effort that would inevitably lead to oppression and loss of freedom). It was, however, designed to protect the nation from threats posed by foreign powers.

Yet, creating a federal government with even minimal power was, as Washington had indicated, a dangerous venture. Power does strange things to those who wield it. As John Emerich Dalberg-Acton (Lord Acton) succinctly phrased it: "Power tends to corrupt and absolute power corrupts absolutely." The Founders believed that it was

entirely possible for champions of freedom 1776 to become dictators in the 1800s if given unlimited power, not to mention what could happen in later centuries. Aware of this possibility, delegates to the Philadelphia Convention established a unique system, based on written law, which denied excessive power to everyone — including themselves.

THE SECRET for keeping government under control was to divide its powers so that no single person, or a small group, could control and manipulate it. To achieve that crucial objective, the Constitution split federal authority into three major parts: legislative (to make the laws); executive (to enforce the laws); and judicial (to interpret laws, using a written Constitution and the intent of those who framed it as a litmus test). Each branch, they hoped, would jealously guard its areas of responsibility while holding the other two branches at bay. The legislative (Congress) would check the executive (President), and vice versa, while the judicial (Supreme Court and lower federal courts) would check them both, and in turn be restrained by both. In addition, House and Senate would serve as curbs on the excesses of each other within the all-important legislative branch.

EXACTLY HOW DOES the process work? Suppose the President wanted to build a 1,000-room mansion, replete with gold-plated walls and diamond doorknobs. Were he instead a king, emperor, or despot, he could express his will in the morning and by afternoon have his tax collectors (and armies if necessary) taking money from his subjects to pay the bills. But as head of the executive branch of the American government, he could merely submit his

request to Congress and urge the House and Senate to approve a bill appropriating the sums required to finance his extravagant whims.

Under the Constitution, all legislation involving money must originate in the House of Representatives and pass in that body before moving to the Senate. It is here that the President would face his first major hurdle, since members of the House are closest to the taxpayers who would be required to pay the bills for the presidential mansion. As voters, taxpayers decide elections, and House members must earn their approval at the ballot box every two years to stay in office. Such relatively short terms enable citizens to remember how their Representatives voted on money-related issues since the last election. In contrast, Senators have relatively lengthy six-year terms, during memory and the wrath of taxpayers can fade. The short House terms were one reason why the Founders required that all money bills originate in the legislative body closest to the people.

Suppose, however that the House opted to support the President's request. The bill would then go to the Senate, where two representatives from each State have a vote. Is it likely that more than one-half of 435 House members and 100 Senators (a minimum of 269 elected legislators) would agree to such an outlandish proposal? Why not? Is there any way the President could compel Congress to grant his wish?

[Explain that the President has no power under the Constitution to force members of Congress to vote his way. Should he be devoid of principle, however, he could resort to such tactics as blackmail or bribery. For example, he could hire investigators to dig up scandalous gossip about individual legislators and threaten to make the information public unless they vote for the new mansion. Or he could offer money or favors, such as federal grants for their districts or states. And he could promise to nominate them as ambassadors to foreign countries, or federal judges, or give them other high-paying jobs in government after they leave Congress. The temptation for a Representative or Senator would be great, perhaps so much so that he or she would opt to vote as President wishes, and risk defeat in the next election, secure in the knowledge that a lush government job awaits as a backup.]

FOR THE SERIOUS STUDENT

Find out more about the delegates who attended the Constitutional Convention. Brief descriptions and photographs of ten of the most prominent are included in *Quest Of A Hemisphere*, pages 150 through 186. Questions might include: Which delegate was the only person to sign all four great documents of early American history? How many delegates had fought in the Revolutionary War? How many were lawyers? What was the average age of the delegation? Which delegate was oldest? Which was youngest?

How could such blackmail and bribery be stopped? [One answer is to elect only men and women of unquestioned integrity who do not have skeletons in their closet, and who would not only refuse attempts at bribery, but would denounce such offers publicly.]

THE CHECKS AND BALANCES of the U.S. Constitution also tend to preclude Congress from abusing its legislative authority to usurp executive or judicial powers. Suppose, for instance, that Congress passed a law reducing the President's salary to \$1.00 per year and denying him more than two Cabinet officers to assist in executing the laws of the land. This would be a deliberate attempt to usurp executive authority by hamstringing the Chief Executive. Would the Constitution allow it? Why not? [Explain that the President has the constitutional right to veto (i.e., refuse to sign) any bill or joint resolution (except joint resolutions proposing amendments to the Constitution). Vetoed legislation cannot become law unless it is subsequently passed by two-thirds of both the House and Senate. The presidential veto is an important check on the power of Congress, intended to preclude hasty and unwise legislative action.]

Suppose, on the other hand, both Congress and the President desired to create titles of nobility for themselves. The President might, for example, request legislation requiring that he be called "His Majesty," and Congress might approve it — provided the President would sign a bill giving members of Congress the title of "Earl." In that event, two branches of government would be conspired to create an American monarchy. Could it happen? Why not? [Explain that the Constitution specifically forbids the granting of titles of nobility. Any proposed law to the contrary, even if passed by the House and Senate and signed by the President, would be declared null and void by the judicial branch — the federal courts assigned to interpret laws according to the Constitution.]

THERE ARE MANY other checks and balances built into the Constitution. For example, the President has the power to make treaties with foreign nations, but each treaty must be approved by a two-thirds supermajority of the Senators present when it is con-

sidered. The President can nominate anyone he chooses to certain high positions in the executive branch, but the nominations must be approved (or can be rejected) by the Senate. Congress can pass whatever laws it favors, but any citizen who believes that a law is illegal can appeal to the courts (judicial branch) to have the constitutionality of the law tested. The President is Commander-in-Chief of the nation's army and navy, but only Congress may declare war. The executive branch spends money, but only after Congress authorizes and funds the expenditures. Federal judges and Supreme Court justices are appointed for indefinite periods, can be removed from office by Congress if found guilty of treason, bribery, or other high crimes and misdemeanors. (The same is true for the members of the executive branch, including the President). And Congress is authorized by the Constitution to limit the appellate jurisdiction of the federal judiciary (i.e., preclude federal courts from hearing cases on appeal from state courts), thereby leaving decisions in the areas involved to the states.

Considering the many checks and balances between the three branches of government, one might conclude that those who framed the Constitution created a most cumbersome and inefficient form of government. And that is exactly what they meant to do! The delegates at Philadelphia in the summer of 1787 were primarily concerned with life, liberty, and the pursuit of happiness for all of our citizens, not government efficiency.

Had they wanted an "efficient" government, what could they have created? [Ask for opinions.] Yes, it could have been a dictatorship, because laws under such an unrestricted government can be made during breakfast and implemented before lunch. Who dares check or balance a despot? But under such "efficient" systems, the rights and liberties of the individual rapidly wither and disappear. Which would you prefer: efficiency or the enhancement of liberty? [Encourage everyone to answer.] And what about anarchy (no government)? Would it be preferable to either dictatorship or our limited form of constitutional government?

Concluding Thought

To sum up, the delegates to the Constitutional

Convention steered a middle course between the anarchy that threatened the 13 colonies under the Articles of Confederation, and the efficient, but often brutal and oppressive, alternatives of monarchy or despot. They sought to create a servant — replete with limitations and restrictions calculated to preclude the abuse of power — not a master. The Framers gave the new nation a blueprint that could, if followed, protect the rights of each citizen from government abuse.

Looking Ahead

When the Constitutional Convention adjourned, a woman waiting outside the Philadelphia State House anxiously asked Benjamin Franklin, “Well, Doctor, what have we got — a Republic or a Monarchy?” To which the weary, aged delegate replied, “A Republic, if you can keep it.”

What did Franklin mean by “if you can keep it”? What is a republic, and why would it be difficult to “keep”? We will answer these questions next week, when we discuss the difference between a republic and a democracy.

DURING THE WEEK

Have family members memorize George Washington’s famous quotation about the dangers of government. To reinforce the concept, you may wish to print the quotation in large letters on a note card or sheet of paper and post it on the family bulletin board or near the telephone.

Continue the section by section study of *Your Rugged Constitution* by reading about Article II of the Constitution (duties, powers, and requirements of the executive branch) on pages 112-141. [Presumably, the book is out-of-print, so could we scan/post it on our website?

— rwl]

WASHINGTON’S QUOTATION:

“Government is not reason;
it is not eloquence;
it is force! Like fire,
it is a dangerous servant
and a fearful master.”