

His functions of the
executive, legislative
and judicial



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His answer is simple: by separating the functions of the executive, legislative and judicial departments of government so that one may operate as a balance against another and, thus, power should be a check on power.

Le pouvoir arrete le pouvoir; power halts power. A constitution may be such that none “ shall be compelled to do things to which he is not obliged by law, or not to do things which the law permits.” Montesquieu’s thesis is the division of powers by functions and the theory emerging there from is known as that of the Separation of Powers. The exposition given by Montesquieu has now become classical. The idea contained in the theory of the Separation of Powers was not entirely unknown before Montesquieu. Its origin can be traced back to Aristotle, if not indeed to earlier writers. In the *Politics* is found an analysis of three “ parts”, or branches of government—the deliberative, executive and judicial.

Aristotle did not go into details. He confined himself to a description of their personnel, organisation, and functions, without suggesting their separation. Various political philosophers, from Marsiglio of Padua in the fourteenth century, gave some attention to the theory of Separation of Powers, but it meant little to Political Science until the issue of political liberty became urgent. In the seventeenth century it “ began to acquire meaning, and in the eighteenth, with critical times, it came to the forefront of discussion.” There are traces of the theory in John Locke’s *Civil Government*. Locke distinguished between three powers that existed in every commonwealth. These he called legislative, executive and federative; the federative power related to the conduct of foreign affairs. The executive and federative

powers, he pointed out “ are always almost united”, and to this union he expressed no objection.

But he would not permit the union of the executive power with the legislative. The legislative power, he said, “ in well-ordered commonwealth, where the good of the whole is so considered as it ought”, is placed in the hands of an assembly that convenes at intervals. But since the administration and enforcement of law is a continuous task, a power distinct from the legislative must remain “ always in being.” In practice, “ the legislative and executive powers come often to be separated.” In principle, too, Locke argued that they should be separate, “ because it may be too great temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws to have also in their hands the power to execute them.

” This division of authority and the separation of executive and legislative power is justified and explained by Locke on the ground that it is necessary for the maintenance of liberty. Liberty suffers when the same human beings make the laws and apply them.