

Madison the diversion  
of that knowledge  
towards



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Madison correctly explained the doctrine of Separation of Powers when he said, “ The powers properly belonging to one department ought not to be directly administered by either of the other departments.

It is equally evident that neither of them ought to possess, directly or indirectly, an over-ruling influence over the other in the administration of their respective powers.” The premise of Federalist Paper 47, which is essentially concerned with the political theory of federalism, is that any person or body of persons possessing power may be tempted to abuse it unless controlled, and that power can be checked by power. The Separation of Powers attempts to create a balance among the competing units. The State is an organic unity and the various departments of its machinery are interconnected. By the nature of their functions, they cannot be divided into water-tight compartments. The government must always be viewed as a whole, and its organs, though distinct, must work in unison in order to be useful and effective in serving the purposes for which they have been created. The real problem, according to MacIver, “ is so to articulate these that responsibility shall not be divorced from efficiency.” The functions of government are divided into different departments so that each department does its job to the best of its efficiency and with due regard to its responsibility.

Efficiency demands expert knowledge of the problems which face a country and responsibility means the diversion of that knowledge towards those channels which are responsive to the needs of the people. This is the first principle of democracy. The Separation of Powers is, accordingly, needed for proper articulation and not for the division of organs of government into

water-tight compartments. To put it in the language of Almond and Powell the theory of Separation of Powers is pre-eminently a functional theory. " Among its central concerns are the nature of legislative, executive and judicial power; the question of how best to maintain their separateness; the values resulting from such separation; and the problem of how best to mesh these separate institutions of government with the structure of society."

There cannot be any isolation or disharmony between the different departments of government. Isolation is not the essence of the doctrine and Montesquieu never suggested it. Each department performs some functions which actually do not belong to it.

In fact, in all modern systems, institutions exercise overlapping functions of some kind or provision is made for some degree of cooperation between the different organs and branches to perform the work of government. The legislative department is not wholly and solely confined to the legislative mode of action, although it is primarily and mainly concerned with that mode. There is a judicial organ primarily and mainly concerned with the judicial mode of action, but not necessarily confined to that mode. There is, similarly, an executive organ which may be concerned with other modes of action besides the executive. A judge, for example, makes a new law when he gives a decision on a point covered by law or in which there does not exist a precedent. Here is a case in which the judicial and legislative functions combine as a result of natural process.

Again, the executive everywhere possesses the power of issuing ordinances and proclamations. This is a device of practical utility, but it has to be admitted that ordinances and proclamations are a formidable substitute for

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legislation. The executive is a legislature in another sense too. It suggests and guides the process of law-making by the legislative organ. It does so under the American system of division of functions between the President and Congress; and it does so even more under Cabinet system such as the British and the Indian. The legislature, too, performs various executive functions. In a parliamentary government it creates the real executive, retains it in office and controls its functions. In the Presidential system, as obtainable in the United States, the Senate has a share in making appointments and ratifying treaties.

Executive and legislative departments perform judicial functions too. The Chief Executive head of the State everywhere possesses the power of pardon. The House of Lords is the highest Court of Appeal in Britain. The Senate in the United States acts as a court of impeachment. There is no Separation of Powers in Britain as Montesquieu is claimed to have understood. He had in his mind a longing for liberty against the autocratic powers of Kings and princes.

Britain presented to him a sharp contrast with the conditions prevailing in his own country. Without forming a real idea of the actual working of a democratic government, more so a responsible, he concluded that liberty can be secured only by a mechanical check of one department over the other. For him this was above all else a practical recipe for political liberty.

But Montesquieu wrote at a time when institutional checks appeared to be the only feasible ones. The value of the doctrine by dispersing functions among different political institutions is that it attempts to provide a limit to

political power and a brake on action by constitutional devices. Power must be limited if liberty is to exist, for unchecked power is as dangerous as the unity of temporal and spiritual powers. This is precisely what Montesquieu enunciated.