

Separation of Powers

On Law Day, the topic was “Separation of Powers”. No doubt that was chosen by the American Bar Association to draw attention to President Donald Trump and his allegedly stomping on both judicial and legislative prerogative. There is nothing new about fights over separation of powers.

Separation of powers was first discussed in the Bible. When Moses came out of Egypt he met and talked with his father-in-law Jethro. He told Jethro of the liberation from Egypt and God’s miraculous assistance to the Israelites.

When Moses was done telling his father-in-law his story, Jethro decide to give his young son-in-law some advice. Essentially Jethro told Moses that because he was doing so many jobs at once, he would get tired and worn out but more importantly the people would get fed up with Moses. Imagine the prophetic tribal Jethro telling Moses how to run the nation. Moses immediately agreed and broke the government down into many components. The two men kiss and part.

Interestingly, after the delegation of powers by Moses, one of Moses’ aides came to him indicating that others in the camp were running about “prophesying like Moses.” What does a good leader do under such circumstances? Moses did not suppress the appetite for leadership by others but rather said, “Oh but if all the people were prophets”.

Charles D. Montesquieu is given credit as the modern founder of the Separation of Powers. James Madison, who is often credited with writing the Constitution of the United States, was a great admirer of Montesquieu. Madison discussed the separation of powers in the *Federalist, No. 47*.

The honest truth is that separation of powers was adopted in order to create a weak government; one that could do more than the feckless Articles of Confederation. The powers generally given to the new United States were stronger than those given to the individual states by the Articles of Confederation, but that new more powerful entity was also divided to keep it ever from dominating the people.

Said Madison, “The ambition” of man had to be tamed by separating sources of power.” He feared the “gradual concentration of the several powers in the same department.” In every presidency there has been a dispute over where the powers should reside and who has the right to exercise it. Washington’s Neutrality Proclamation, to keep the United States out of war between England and France, was said to violate the Senate’s war-making power. When President Trump launched missiles against the Syrian tyrants recently, his opponents cried, “violation of separation of powers.”

Millions of Americans have gone to their deaths doing battle, in undeclared wars. The United States had come up with a new system circumventing the Constitution by permitting Congress to grant the president war powers, without ever going to the legislative branch for an actual declaration of war. This too is a violation of the concept of separation of powers.

Perhaps most important is not the 230-year fight over separation of powers, but rather the creation of additional branches of government. We are now well beyond the executive, legislative and judicial. We have in the United States an administrative branch, which is the bureaucracy. We also have in the United States both a lobbying branch of government and the corporate branch. The lobbying branch pays legalized bribes to politicians in return for votes while the corporate sector continues in an uneasy partnership with government at every level. This great proliferation of powers by at least six different branches of government makes John Doe citizen feel powerless and frustrated.

Some political scientists, and one can laugh at calling politics “science”, have suggested that we go to a parliamentary system. In all modern countries the legislature, usually only one branch, elects from its ranks a prime minister. The prime minister has executive powers but clearly comes from the legislative branch. Prime ministers who owe their power to the legislature head the bureaucracy. The parliamentary system has its own disadvantages, those usually being a proliferation of parties that make governing hard to accomplish. Would that be any more difficult than our current system where gridlock has been institutionalized and separation of powers has made government ineffective? These are good topics for beer and pizza when there are no good games on the television.

Our nation has long-endured under what has become a Model-T government. It certainly is time for us to consider how we might shrink our overlapping layers of state and federal government while at the same time making the work of the people both more efficient and more honest. No system will work well without election finance reform so that our politicians are owned by the people rather than by the richest political action committees.

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