

The Constitutional Separation of Powers

Part One: The Wise Choices of the Framers

Throughout the years, one of the questions most frequently posed by my students was, “Why did the Framers of the Constitution make our system so complex?” The answer is not because they wanted to make life miserable for future generations of government students.

The individuals who developed our Constitution understood human behavior and created a system of government that would protect us from the worst of our instincts. Humans are emotional and capable of actions they will later regret. Humans are lovers of power and may not exercise that power in the best of fashions. The Constitution was written to protect our nation from these less than noble human instincts.

One of the ways that the Framers sought to accomplish this was with the separation of powers into legislative, executive and judicial branches. The Congress, the President and the Supreme Court would each have checks upon the other two branches and would each be checked by the other two branches. This system of separation of powers and its web of checks and balances was designed to prevent the government from engaging in questionable actions that ranged from the unwise to the malicious.

The Framers arrived in Philadelphia to construct a new system of government with two events fresh in their minds: the experience of the abuse of power by the King of England and the first failed attempt to govern ourselves in the Articles of Confederation. They wanted to learn from these experiences and to create something better.

James Madison, acknowledged by many as the Father of the Constitution, put forth a proposal that suggested, “If you are worried about the abuse of power by government, then stop putting all of the power of government into a single set of hands.” The King possessed all of the power under colonial rule and that led to tyranny. In the Articles of Confederation, all of the power was given to the states and that led to chaos. The Framers wanted to avoid both of these extremes. Their solution was to create a federal government, but to divide power between a Congress, a President and a Supreme Court.

With this strategy, weren't the Framers creating a more inefficient system, one that could experience frequent battles between the branches of government? The answer is yes. That is what the Framers wanted. It is essential to remember that the Framers were not focused on creating a system of government that would get things done quickly or easily. Their greatest concern was the emergence of a single force within the government that would become so powerful that it posed a threat to the principles that formed the foundation of this new system: limited government, commitment to the rule of law and protection of civil liberties.

Human nature was not to protect these values. With the separation of powers, the Framers sought to create a system that would protect these values from the worst of human instincts.

The people who wrote the Constitution had the opportunity to enrich only themselves, to ensure that they would be the ones who would possess all of the power under our constitutional system.

Instead, they chose to create a system of limited government, in part by separating the power of government. It was this wisdom that allowed us flourish as the constitutional republic we became.

In Part Two, we will focus specifically upon the Framers' view of the presidency and how it fits into the separation of powers.

Part Two: No More Kings

The Framers of the Constitution recognized that one of the problems with our first attempt to govern this new nation, the Articles of Confederation, was that it included no provision for a President of the United States. They knew that the second attempt, the Constitution, would need to include a president with sufficient power to carry out the duties of an executive. (Hamilton quote?)

However, the Framers also recognized that the inclusion of a presidency carried with it the potential for danger. We had just fought a Revolutionary War to escape the rule of a King. We had experienced what happens when a single person is in possession of too much power and we had taken up arms to free ourselves from this executive tyranny. The last thing in the world the Framers wanted to do was create a newer version of the King in the form of the president.

The Framers of the Constitution understood the very human tendency to get caught up in the heat of the moment and to follow the questionable logic of the crowd. Federalist 63 states, "So there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn." Thus, the Framers created a constitutional system that placed barriers between the cries of the public and the actions that would be taken by government.

The House of Representatives, whose members faced the voters every two years, would be the branch of government most responsive to the people. However, the House could be checked by the Senate, whose members stood for reelection every six years. Senators were positioned by the Framers to be less influenced by the whim of the public.

Other parts of the Constitution imposed additional barriers between the people's demands and the actions of government. While a popular president may negotiate a treaty with another nation, that treaty does not have the force of law until two-thirds of the Senate vote in favor of the agreement. The Framers wanted there to be careful consideration of a document that would place the country in a binding relationship with another nation. The will of the president would not be enough.

Another example of the Framers' creation of a distinction between what is popular and what the government will allow is judicial review, the power of the courts to rule laws passed by the people's elected representatives in violation of the Constitution and thus invalid. Why would the Framers provide such power to the courts? They believed that it would be possible for the people to be whipped into a frenzy that would result in the passing of laws that violated the Constitution. When that occurred, the courts were expected to step in and strike down the law.

The classic example of this came in the early 1950's, when a majority of the people and their elected representatives were satisfied with having separate schools for the different races. Despite popular support for such laws, the United States Supreme Court in *Brown v. Board of Education* (1954) ruled that "separate but equal" educational facilities violated the Fourteenth Amendment of the Constitution. This was consistent with the Framers' plan: the Constitution, not the prejudice and fear of the people, would prevail.

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recognized and capitalized on the way people act.

One of the most essential ideas contained within our system of government is the Separation of Powers.

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They knew that humans are prone to overreact to situations without fully considering

The Framers of the Constitution gave us a system of government that values a clash of ideas and perspectives, that slows the decision-making process down.

One of Madison's greatest fears was the temporary majority, the human tendency to overreact to a situation without considering all of the different possibilities.