

“SEPARATION OF POWERS: PREVENTING TYRANNY”

WEEK 4 — KEVIN PORTEUS  ASSISTANT PROFESSOR OF POLITICS

SEPARATION OF POWERS is the central structural feature of the United States Constitution. The division of power among the three branches—legislative, executive, and judicial—is necessitated because human beings are imperfect. The imperfection of human nature means that well-structured government is necessary, though not sufficient, to prevent tyranny.

LECTURE SUMMARY

The United States Constitution is structurally designed in part to prevent tyranny. Separation of powers is the means by which power is divided and its accumulation in the hands of any single entity denied.

During the 1780s, most states had constitutions that formally divided the government’s power, yet in practice the legislatures dominated. The state constitutions required separation of powers in theory, but failed to deliver it in reality. As a result, the constitutions were little more than what Publius called “parchment barriers.”

In order for separation of powers to work, each branch of government must have the “constitutional means” to resist the encroachment of the other branches. This is what today we call “checks and balances.”

In addition to institutional checks and balances, there exist also the “personal motives” of people that will lead them to resist the encroachment of the other branches. Human nature is constant across the ages, according to Publius, and human beings are naturally ambitious. Instead of ignoring or attempting to suppress ambition, the Framers sought to channel it through the Constitution, so that it might serve the cause of liberty and justice rather than threaten it.

The Framers understood that human nature has noble characteristics that are essential to self-government, but also that it contains baser features, for which government must account. The Constitution’s structural separation of powers recognizes this truth, and in preventing tyranny makes self-government possible.

KEY PASSAGES FROM THE READINGS

FEDERALIST 47 ~ James Madison

“The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.” (*The U.S. Constitution: A Reader*, pages 269-270)

FEDERALIST 48 ~ James Madison

“Will it be sufficient to mark, with precision, the boundaries of these departments in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power?” (*The U.S. Constitution: A Reader*, page 278)

FEDERALIST 51 ~ James Madison

“[T]he great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.” (*The U.S. Constitution: A Reader*, page 288)

“Ambition must be made to counteract ambition.” (*The U.S. Constitution: A Reader*, page 288)

“[T]he constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other—that the private interest of every individual may be a sentinel over the public rights.” (*The U.S. Constitution: A Reader*, page 288)

“But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.” (*The U.S. Constitution: A Reader*, page 288)

STUDY QUESTIONS

1. Why is separation of powers so important to the structure of the United States Constitution?
2. What is a “parchment barrier”?
3. How do checks and balances derive from the separation of powers?
4. What are some of the checks and balances between the three branches?
5. Publius writes that “if men were angels, no government would be necessary.” How is separation of powers a reflection of this statement?

DISCUSSION QUESTIONS

1. How has the separation of powers been eroded in the last century?
2. Publius writes that “the private interest of every individual may be a sentinel over the public rights.” How does “private interest” help protect the “public rights”?
3. Does the structure of the Constitution accurately reflect the reality of human nature? Were the Founders too pessimistic, or too optimistic, about human nature?
4. Given how it has been ignored and degraded, is the Constitution in danger of becoming a “parchment barrier”?



HILLSDALE COLLEGE

PURSUING TRUTH · DEFENDING LIBERTY SINCE 1844

33 EAST COLLEGE STREET
HILLSDALE, MICHIGAN 49242

HILLSDALE.EDU