

Some Debates in the Constitutional Convention on the Separation of Powers

The delegates at the Constitutional Convention were strongly influenced by Montesquieu's principle of separating powers among branches of government. However, the exact structure still had to be determined. These debate excerpts reveal how delegates responded to different proposals about which powers each branch should hold, highlighting the complex negotiations that shaped the final Constitution.

June 2, 1787, Jump to e675310

***Note:** On June 2, Mr. Dickinson proposed an amendment that the executive “be removable by the national legislature upon request by a majority of the legislatures of the individual States.” When arguing for his proposal, he made a separation of powers argument saying that power should be divided across the national government and the state governments.*

Mr. Dickenson [sic] considered the business as so important that no man ought to be silent or reserved. He went into a discourse of some length, the sum of which was, that the Legislative, Executive, & Judiciary departments ought to be made as independt. as possible; but that such an Executive as some seemed to have in contemplation was not consistant with a republic; that a firm Executive could only exist in a limited monarchy.

How would you summarize Mr. Dickinson's remarks? How do his remarks reflect the influence of the Glorious Revolution and Montesquieu's ideas?

July 20, 1787, Jump to e673049

Note: On July 20, it was proposed that the president be “removable on impeachment and conviction of malpractice or neglect of duty.” Rufus King from Massachusetts worried about this suggestion. He thought that because the President’s term was limited, the Constitution did not need the power to impeach the executive. He thought that it was proper for the members of the Supreme Court to face impeachment because they had a lifetime appointment, but not the President. He argued for a re-commitment to the separation of powers.

Mr. King expressed his apprehensions that an extreme caution in favor of liberty might enervate [weaken] the Government we were forming. He wished the House to recur to the primitive axiom that the three great departments of Govts. should be separate & independent: that the Executive & Judiciary should be so as well as the Legislative: that the Executive should be so equally with the Judiciary.

How would you summarize Mr. King’s remarks?

Which branch did Mr. King think should be the most powerful?

July 21, 1787, Jump to e673068

***Note:** On July 21, James Wilson proposed that the Supreme Court and the President should both have the power to revise laws created by Congress.*

Mr. Madison-. . . [Combining the judiciary with the executive] would be useful to the Judiciary departmt. by giving it an additional opportunity of defending itself agst. Legislative encroachments. . . If any solid objection could be urged agst. the motion, it must be on the supposition that it tended to give too much strength either to the Executive or Judiciary. He did not think there was the least ground for this apprehension [or worry]. It was much more to be apprehended [noticed] that notwithstanding this co-operation of the two departments, the Legislature would still be an overmatch [more power] for them. Experience in all the States had evinced [shown] a powerful tendency in the Legislature to absorb all power into its vortex. This was the real source of danger to the American Constitutions; & suggested the necessity of giving every defensive authority to the other departments that was consistent with republican principles.

How would you summarize Mr. Madison's remarks?

What branch did Madison believe would be the greatest threat to the liberty of the people?

Mr. Gerry [Opposed taking up the idea to allow judiciary to revise the laws made by the legislature, with the help of the executive.] It was combining & mixing together the Legislative & the other departments. It was establishing an improper coalition between the Executive & Judiciary departments. It was making Statesmen of the Judges; and setting them up as the guardians of the Rights of the people. He relied for his part on the Representatives of the people as the guardians of their Rights & interests. It was making the Expositors of the Laws, the Legislators which ought never to be done. . .

How would you summarize Mr. Gerry's argument?

Why did Mr. Gerry oppose granting the judiciary [Supreme Court] the power to revise laws made by the legislature (Congress)?

Mr. Wilson. The separation of the departments does not require that they should have separate objects but that they should act separately tho'[through] on the same objects. It is necessary that the two branches of the Legislature should be separate and distinct, yet they are both to act precisely on the same object.

How would you summarize Mr. Wilson's remarks? Do you agree with his point that different branches of government could all work on making laws and still follow the principle of separating powers?

EVALUATE

In your opinion, which is the best argument for separating the powers of government? Support your answer.

FINAL WORDING IN THE CONSTITUTION ABOUT SEPARATION OF POWERS ACROSS BRANCHES OF GOVERNMENT

Article I.1: All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article II.1: The executive Power shall be vested in a President of the United States of America.

Article III.1: The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

PREPARE FOR CLASS DISCUSSION

How did the delegates in the Constitutional Convention separate the powers of government to prevent tyranny?

In your opinion, is the design the delegates in the Constitutional Convention created the best design for separating power? What would you do differently? Support your answer.

The Constitution's success was not guaranteed, it depended on the delegates' decisions at the Convention and ultimately on the people's ratification. What does this reveal about how history is shaped by human choices and uncertainty?