

Separation of Powers

The desire to obtain, and then, ultimately, to abuse power, has been almost universally recognized by thinking men throughout the ages. The great statesman Lord Acton observed that “power corrupts, and absolute power corrupts absolutely.”¹

While the aforementioned men were not contemporary with the founders of this Nation, the men who framed this nation’s government recognized this—had experienced this—and sought to control this almost universal tendency to seek, obtain, and then abuse power. Consequently, as they established this nation’s new government, in which liberty was to reign, they sought diligently to limit power to specific purposes, and to then divide and subdivide the granted power to prevent its accrual or consolidation into a focal point.

Thomas Jefferson said: “In questions of power then let no more be heard of confidence in man; but bind him down from mischief by the chains of the Constitution.”²

James Madison suggested the means to prevent this universal tendency to abuse power, saying:

“But the 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 provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature that such devices should be necessary to control the abuses of government, 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.”³

Madison also observed:

“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.”⁴

Unfortunately, modern Congresses have blatantly disregarded their responsibility in the matter of powers delegated solely to them, lacking the courage to fulfill their constitutionally-mandated duty in this regard. They have failed in the natural tendency to jealously guard their sphere of influence. Dereliction of duty is the kindest definition which could be attached to the posture of Congress in this regard. Over the past several decades, Congress has made flimsy excuses as they have mumbled nonsense about “delegating” their authority in various issues (such as matters pertaining to war or international trade) to the President, or to international bodies; or blaming their impotence upon “treaties” which tie their hands and require (through entangling alliances) the United States to perform certain “obligations.”

Constitutional protocol was well understood by those who founded this nation, and they knew that the authority which was assigned in the Constitution could not legally be delegated to another entity (foreign or domestic). The founders had diligently studied the works of John Locke. John Locke was emphatic in the matter of delegating constitutionally-mandated authority:

“The legislative cannot transfer the power of making laws to any other hands, for it being but a delegated power from the people, they who have it cannot pass it over to others. The people alone can appoint the form of the commonwealth, which is by constituting the legislative, and appointing in whose hands that shall be. And when the people have said, ‘We will submit and be governed by laws made by such men, and in such forms,’ nobody else can say other men shall make laws for them; nor can they be bound by any laws but such as are enacted by those whom they have chosen and authorized to make laws for them.”⁵

St. George Tucker, one of the preeminent constitutional scholars of the American founding era agreed with that position, stating: . . . a delegated authority cannot be transferred to another to exercise.⁶

For many years now, the nation has strayed from these sound principles. The carefully devised plan of the founders of this Nation regarding the separation of powers is almost universally ignored. Those who hold a given constitutional power routinely allow others to encroach upon their authority, and then reciprocate by usurping power not delegated to them. The price of such action is yet to be fully realized. If the liberties which were bequeathed to the nation are to be saved, we must immediately restore the foundation upon which the nation was established and built. Congress must again assume its duty in the matters delegated to them, and wrest again their rightful power from the hands, both foreign and domestic, which have usurped the congressional Constitutional responsibility.

—Scott N. Bradley

1 - Lord Acton, letter to Mandell Creighton, April 5, 1887.—Acton, *Essays on Freedom and Power* ed. Gertrude Himmelfarb, pp. 335-36 [1972]) Daniel Defoe noted: “All men would be tyrants if they could.” (Daniel Defoe, *The Kentish Petition*, addenda, 11 [1701])

2 - Thomas Jefferson, *The Writings of Thomas Jefferson*, Kentucky Resolutions. Bergh 17:388. [1798]

3 - Federalist No. 51

4 - Federalist No. 47

5 - John Locke, *Second Essay Concerning Civil Government*

6 - Tucker, *View of the Constitution of the United States* Pg. 219 [1803]