



## Worksheet 2b - Constructive Purpose of Separation of Powers and Partial Agency

Students should read the extract below annotating and highlighting it as appropriate.

### Separation of Powers and Partial Agency in the US system of government.

The Founding Fathers looked at the example of Great Britain in the late 18th century and decided that if their new union of states were to work, the branches of government needed to be separate. They were influenced by the ideas put forward by Baron de Montesquieu in *De l'Esprit des Lois* in 1748 where he developed the earlier ideas of John Locke regarding separating the branches of government<sup>1</sup>. The Founding Fathers were determined to preserve democracy and republicanism for the new United States of America, prevent the possibility of tyranny and of one branch becoming so powerful that it could override the others. They believed, at this stage, that they needed to control the legislative branch in particular.

Hence the first aspect of Separation of Powers: that no person can belong to more than one branch of government simultaneously. There is no requirement in the USA that the leader of the executive branch (the president) should also be a member of the legislature, as in the parliamentary model of the UK system. In fact, in the USA this is forbidden. Until 2005 in the UK there was also overlap between the legislature and the judiciary (and the executive in the case of the Lord Chancellor), yet in the USA this was prevented from the start and the independence of each branch from the others was assured, as the Founding Fathers wished, because there was no crossover of personnel. One of the results of this is that government in the USA is always a compromise as the president can propose but cannot control Congress' reactions to his proposals. He is not a party leader, and party discipline in Congress acknowledges that Congressmen and Senators differ on issues and will vote differently even though they may have the same party label. There is no built-in executive dominance in the US system, unlike the parliamentary system in the UK where there is no separate election of the executive – it emerges from the legislature through general elections and has to be the party capable of commanding a majority there. In the UK the parliamentary model provides for the executive to also be *accountable* to the legislature (parliamentary sovereignty) whereas there is not the same sort of accountability of the president to Congress in the US system. The president and his administration are not required to answer questions in Congress as the Prime Minister and government ministers are in the UK, although Congress does perform oversight of the executive through committees etc.

There is, however, a second and often overlooked aspect to separation of powers. The Founding Fathers could see the inherent danger of *complete* separation of the three

branches for the quality and cohesion of policy-making: if all three branches were completely separate then each could get on with its own job but be potentially oblivious to what the other branches were doing. The result would be chaotic government at best, with a resulting lack of consultation, consistency and integrity to policy and laws. In other words, complete separation – whilst admirable for preventing tyranny – would probably lead to poor governance.

The Founding Fathers therefore built a system of checks and balances between the three branches that has the effect of binding all three branches together, and stops any one of them pursuing its own agenda in isolation from the other two branches. The effects of this system are usually thought of as negative: slow and cumbersome policy-making, logrolling, veto and veto override, the necessity for compromise and negotiation, divided government and possible gridlock, lengthy consideration and possible overturn by the Supreme Court etc. However, whilst all of these can be seen as drawbacks (to the modern observer) to the system of checks and balances that governs separation of powers in the US system, what is often overlooked are the positive advantages of this arrangement. The original purpose of it was to make governance better, not worse. The fact that governance is sometimes *difficult* is a quite deliberate construct because the Founding Fathers believed this would make governance better. All three branches have 'partial agency'<sup>2</sup> in the work of each of the other branches and this means that no law can come into force unless all three branches are happy with it. Each branch has its own role to play in the legislative process. The United States is a huge and diverse nation with many shades of opinion across it. For a law to work, and for government to be truly with the consent of the governed, all three branches need to agree it is appropriate and approve it. This improves the validity of legislation. Additionally, legislation is the result of lengthy negotiation between the executive and legislative branches, which invigorates them both and improves its quality. The possibility of override by one of the other branches makes the actions of each branch more deliberative, more considered and better.

Of course, the Constitution was written in a simpler age. Critics argue that this elaborate system of separation and checks no longer works. In particular, they argue that it frustrates the executive branch too much when today's problems (such as healthcare, gun control, environmental regulation etc.) can only be solved by greater federal action across the entire nation to ensure equity and resolute action. In the face of constant frustration the executive branch, in particular, seeks out methods of circumventing the checks on its power. However, these checks are so numerous, and at so many levels, that it has so far proved impossible for this branch or any of the others to dominate completely.

<sup>1</sup> *Second Treatise of Government*, John Locke, 1689.

<sup>2</sup> *The Federalist No 47*, James Madison, 1788.

Arguments for the constructive purpose of separation of powers and partial agency.

Which of the following statements are valid and invalid arguments for the constructive purpose of separation of powers and partial agency? Place a ✓ in the correct column.

Statement	Valid	Invalid
It is necessary for the branches to communicate effectively with each other.		
'Separate institutions sharing power' is an ineffective and inefficient way of getting things done.		
It is a means of avoiding the dominance of the legislative branch over the other two branches, preventing tyranny.		
It provides a restraining influence of each branch over the others.		
Constant interference by each branch in the work of the others weakens US government.		
Each branch contributes a specific sort of expertise to the whole through a division of labour that results in efficient government.		
It makes everything too time-consuming and US government cannot do anything radical quickly.		
Separation of powers leads to gridlocked government.		
The threat of non-compliance of the other branches makes each branch improve the quality of its work, making US government as a whole more effective.		