

In Search of the Supreme Flaw of the Land: Separation of Powers

by

Sam Aurelius Milam III
c/o 4984 Peach Mountain Drive
Gainesville, Georgia 30507

This essay was first completed on Tuesday, September 10, 1991 and was most recently revised on Monday, April 26, 2021.

This document is approximately 6,913 words long.

Other essays in this collection are available in *Pharos*.

This essay is LiteraShare.

That means that it isn't for sale and that it isn't protected by a formal establishment copyright. As the author, I ask you to extend to me the courtesy that is reasonably due. If you copy the essay, then copy all of it including my name and address as shown on each page, and this LiteraShare Statement. I invite you to provide such copies for other readers. If you quote from the essay, then do so accurately and give me credit. If you care to make a voluntary contribution to me, then I prefer cash. For checks, money orders, or PayPal payments, please inquire.

caveat lector

This page was intentionally left blank.

In Search of the Supreme Flaw of the Land: Separation of Powers

The Powers of Government

Limiting the Powers

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. Were the federal Constitution, therefore, really chargeable with this accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system.

—*The Federalist Papers*, No. 47: Madison

During the debate over the adoption of the U.S. constitution, much thought was given to the problem of limiting the powers of government.¹ The separation of powers embodied in the U.S. constitution was proclaimed by the Federalists as a necessary part of the best available arrangement. The U.S. constitution also created an interdependence of the separate branches of the U.S. government. That interdependence was intended to prevent any one branch of the U.S. government from becoming excessively powerful. The Federalists asserted that the exclusive exercise of legislative, executive, and judicial powers by different branches of the U.S. government that were nevertheless dependent upon one another for the operation of their powers would cause the powers of the U.S. government to be inherently self-limiting.²

The Legislative Powers

LEGISLATIVE POWER The authority, under the constitution, to make laws, and to alter and repeal them.

—*Bouvier's Law Dictionary*, 1889³

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.

—U.S. constitution, 1789⁴
Article 1, Section 1

Article 1, Section 1 of the U.S. constitution established two important properties of the U.S. government. The first is that only the Congress has legislative powers. The second is that the Congress consists of only the Senate and the House of Representatives. The various powers of the Congress are addressed in 56 different clauses of the U.S. constitution, including amendments.⁵ Although the Congress has a very general power to pass any necessary and proper legislation,⁶ it cannot reassign legislative powers in violation of Article 1, Section 1. The only power that the Congress is authorized to delegate is with regard to the appointment of lower level public officers.⁷

1 See *The Federalist Papers*, Numbers 47 through 51.

2 See *The Federalist Papers*, Number 51: Madison.

3 *Bouvier's Law Dictionary* shows in bold text the words that it defines. Accordingly, the words defined are also shown in bold text in the definitions taken from *Bouvier's Law Dictionary* and presented in this essay. Other bold text in the definitions shown in this essay indicates emphasis added, when so noted.

4 See the item *CONSTITUTION OF THE UNITED STATES OF AMERICA*, in the Glossary.

5 See *A Summary of the Powers Delegated to the Congress*, beginning on page 21 of my essay *The Constitution, The Government, and The Doctrine of Social Contract*.

6 U.S. constitution, 1789, Article 1, Section 8, clause 18

7 U.S. constitution, 1789, Article 2, Section 2, clause 2

In Search of the Supreme Flaw of the Land: Separation of Powers

Powers not specifically given to the Congress are generally forbidden it by the Tenth Amendment. Since the U.S. constitution gave legislative powers only to the Congress, since the Congress consists of only the Senate and the House of Representatives, since the Congress doesn't have the power to delegate legislative powers, and since the Congress doesn't have the power to create other bodies with legislative powers, it follows that no other institution besides the Congress can have legislative powers.

The Executive Powers

EXECUTIVE That power in the government which causes the laws to be executed and obeyed. It is usually confided to the hands of the chief magistrate; the president of the United States is invested with this authority under the national government; and the governor of each state has the executive power in his hands....
—*Bowyer's Law Dictionary*, 1889

executive As distinguished from the legislative and judicial departments (*i.e.* branches) of government, the executive department [*sic*] is that which is charged with the detail of carrying the laws into effect and securing their due observance....
—*Black's Law Dictionary*, 1979⁸

The executive power shall be vested in a President of the United States of America....
—U.S. constitution, 1789
Article 2, Section 1, clause 1

The meaning of Article 2, Section 1, clause 1 is that only the President has the power to enforce legislation. That delegation of power is again addressed in Article 2, Section 3.

... he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States....
—U.S. constitution, 1789
Article 2, Section 3

That clause is generally interpreted to mean that the President can delegate to his officers his power to execute the laws. Actually, there isn't any wording in the clause that will support such an interpretation. Consider this sentence.

I will sleep very well tonight, and so will Sandra Bullock.

The usual interpretation of the sentence might suggest the idea that I have some kind of a relationship with Sandra Bullock, probably a sexual relationship. Actually, there isn't any wording in the sentence to support such a notion. The sentence makes only two statements. It states that I will sleep well tonight. It states that Sandra Bullock will sleep well tonight. There isn't any wording in the sentence that causes the two situations to have anything at all to do with one another. Any idea of a relationship between me and Sandra Bullock is based entirely on a careless misinterpretation of the sentence. It isn't supported by the existing grammar.

8 *Black's Law Dictionary* shows in bold text the words that it defines. Accordingly, the words defined are also shown in bold text in the definitions taken from *Black's Law Dictionary* and presented in this essay. Other bold text in the definitions shown in this essay indicates emphasis added, when so noted.

In Search of the Supreme Flaw of the Land: Separation of Powers

Now, consider again Article 2, Section 3.

... he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States....
—U.S. constitution, 1789
Article 2, Section 3

The clause states that the President shall take care that the laws are faithfully executed. It also states that the President shall commission officers of the United States.⁹ The clause doesn't contain any wording whatsoever that relates the two powers to one another.

The U.S. constitution is notorious for mentioning one after the other in one long sentence powers, restrictions, or ideas that don't have anything at all to do with one another. Examples abound. Here's another one.

The President shall be commander-in-chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.
—U.S. constitution, 1789
Article 2, Section 2, clause 1

The three (or four, depending) different powers that are mentioned in that clause don't have anything at all to do with one another. There isn't any doubt that such mention of different powers in the same clause of the U.S. constitution is utterly irrelevant with regard to there being any relationship whatsoever between the powers so mentioned. That's as true of Article 2, Section 3 as it is of Article 2, Section 2, clause 1 or of any other such clause in the U.S. constitution.

There's a principle of construction at work here. Bouvier stated the principle in a discussion of an analogous topic, contracts.

contract.... *Construction and interpretation* in reference to contracts. The intention of the parties is the pole-star of construction; but their intention **must be found expressed in the contract** and be consistent with rules of law. The court will not make a new contract for the parties, **nor will words be forced from their real signification.**
—*Bouvier's Law Dictionary*, 1889
<emphasis added, bold only, italics is from Bouvier's>

The idea that Article 2, Section 3 gives the President the power to delegate his executive powers to the officers of the United States is entirely a matter of speculation. That intention isn't found expressed in the clause, which doesn't contain any support for the notion whatsoever.

Loosely interpreted, Article 2, Section 3 is generally presumed to extend to other officers of the executive branch the power to execute the legislation. However, even loosely interpreted, the clause extends that power only to the officers of the executive branch. In keeping with the doctrine of a separation of powers that's embodied in the U.S. constitution, the other branches of the U.S. government do not have a constitutional executive power, a constitutional power to enforce legislation.

⁹ It doesn't even specify that they're necessarily executive officers. They might be judicial officers. They might be any kind of officers.

In Search of the Supreme Flaw of the Land: Separation of Powers

The Judicial Powers

JUDICIAL POWER The authority vested in the judges.

The constitution of the United States declares that “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.” Art. 3, s. 1.

By the constitutions of the several states, the judicial power is vested in such courts as are enumerated in each respectively. *See the articles on the several states.* There is nothing in the constitution of the United States to forbid or prevent the legislature of a state from exercising judicial functions;... but even in the absence of special limitations in the state constitutions, legislatures cannot exercise powers in their nature essentially judicial;... The different classes of power have been apportioned to different departments, and as all derive their authority from the same instrument, there is an implied exclusion of each department from exercising the functions conferred upon the others;... The legislative power cannot from its nature be assimilated to the judicial; the law is made by the one, and applied by the other;...

—*Bouvier’s Law Dictionary*, 1889

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....

—U.S. constitution, 1789

Article 3, Section 1

While I was researching the court system for this section of this essay, I couldn’t help but to notice in the sources that I was using the scarcity of references to the U.S. constitution and the abundance of references to English and ancient English jurisprudence and judicial practice. It appears to me that the U.S. court system didn’t begin in 1789. It seems to me that it had already developed through an unbroken evolution from those English sources, altered by the slow accumulation of occasional change. If that’s true, then the writers of the U.S. constitution didn’t establish a new judicial system but, instead, created a judicial branch of the U.S. government that embraced the existing judicial system. Whatever the case, the judicial powers are delegated to the judicial branch of the U.S. government. Except for impeachment, other branches of the U.S. government are not granted any judicial powers by the U.S. constitution.

In Search of the Supreme Flaw of the Land: Separation of Powers

The Executive Branch

Although the exercise of legislative and judicial powers are not delegated to the executive branch, such powers are widely exercised by it.

Exercise of Legislative Powers by the Executive Branch

The exercise of legislative powers by the executive branch is widely published throughout the land. It's openly and unapologetically acknowledged. *Black's Law Dictionary* provides ample documentation.

Regulation.... Regulation is rule or order **having force of law issued by executive authority of government....**
—*Black's Law Dictionary*, 1979
<emphasis added>

Executive order.... An order or regulation issued by the President or some administrative authority under his direction.... To have the **effect of law**, such orders must be published in the Federal Register.
—*Black's Law Dictionary*, 1979
<emphasis added>

Federal Register.... An important function of the Federal Register is that it includes proposed changes (rules, regulations, standards, etc.) of governmental agencies.... Such regulations and rules as finally approved appear thereafter in the Code of Federal Regulations.
—*Black's Law Dictionary*, 1979

Code of Federal Regulations.... The Code of Federal Regulations (CFR) is the annual cumulation of executive agency regulations published in the daily Federal Register, combined with regulations issued previously that are still in effect.... The CFR contains the general body of **regulatory laws....**
—*Black's Law Dictionary*, 1979
<emphasis added>

Executive orders and regulations cannot possibly be constitutional because only the legislative branch of the U.S. government can enact legislation. The very definition of *regulation* is sufficient, in and of itself, to render every regulation unconstitutional, void from its inception, and of no legal effect.

Exercise of Judicial Powers by the Executive Branch

The executive branch also exercises judicial powers. The Nuclear Regulatory Commission (NRC) is only one of many good examples.

NRC fulfills its responsibilities through a system of licensing and regulation which includes, among other things.... the issuance of orders, civil penalties and other types of actions....
—*U.S. Government Manual*, 1984

As part of the administrative process of performing its unconstitutional judicial functions, the NRC initiates its own investigations and accusations, issues its own summonses, conducts its own hearings, passes judgment in actions to which it is itself a party, and in all ways behaves as a court, albeit a kangaroo court.

If the person charged with violation fails to answer within the time specified in paragraph (b) of this section, the Director of Nuclear Reactor Regulation, Director of Nuclear Material Safety and Safeguards, Director, Office of Inspection and Enforcement, as appropriate, will issue an order imposing the civil penalty....
—*Code of Federal Regulations*
10CFR2.205 (c) Civil penalties

In Search of the Supreme Flaw of the Land: Separation of Powers

If a hearing is held, an order will be issued after the hearing by the presiding officer or the Commission dismissing the proceeding or imposing, mitigating, or remitting the civil penalty.

—*Code of Federal Regulations*
10CFR2.205 (f) Civil penalties

The Code of Federal Regulations, a body of unconstitutional executive legislation, openly acknowledges that unconstitutional judicial aspect of the NRC, and even commands a judicial reverence for it.

In the exercise of their functions under this subpart, the Commission, the Atomic Safety and Licensing Appeal Boards, the Atomic Safety and Licensing Boards, and the Administrative Law Judges function in a quasijudicial capacity. Accordingly, parties and their representatives in proceedings subject to this subpart are expected to conduct themselves with honor, dignity, and decorum as they should before a court of law.

—*Code of Federal Regulations*
10CFR2.713 (a) Standards of practice

The fact is that the executive branch of the U.S. government exercises, in the same branch of government, executive, legislative, and judicial powers. Such an accumulation of powers cannot possibly be constitutional. Consider again the thoughts of 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. Were the federal Constitution, therefore, really chargeable with this accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system.

—*The Federalist Papers*, No. 47: Madison

In Search of the Supreme Flaw of the Land: Separation of Powers

The Judicial Branch

Although only judicial powers are delegated to the judicial branch of the U.S. government, both legislative and executive powers are exercised by it.

Exercise of Legislative Powers by the Judicial Branch

JUDGMENT The judgment must confine itself to the question raised before the court, and cannot extend beyond it. For example, where the plaintiff sues for an injury committed on his lands by animals owned and kept carelessly by defendant, the judgment may be for damages, but it cannot command the defendant for the future to keep his cattle out of the plaintiff's land. That would be to usurp the power of the legislature. A judgment declares the rights which belong to the citizen, the law alone rules future actions. The law commands all men, it is the same for all, because it is general; judgments are particular decisions, which apply only to particular persons, and bind no others; they vary like the circumstances on which they are founded....
—*Bouvier's Law Dictionary*, 1889

During the past 120 years, that doctrine has been lost. Today, courts routinely exercise legislative powers. One aspect of the legislative power exercised by the courts is openly acknowledged by *Black's Law Dictionary*.

Judge-made law It is perhaps more commonly used as meaning, simply, the **law established by judicial precedent and decisions. Laws having their source in judicial decisions** as opposed to laws having their source in statutes or administrative regulations.
—*Black's Law Dictionary*, 1979
<emphasis added>

Case law is the term that is most commonly used. Again, only the legislative branch can enact legislation. Case law, judge-made law, precedent, class-action ruling, or whatever else it might be called is inherently unconstitutional because it gives to court decisions a legislative power over future events. Any judicial decision that is applied beyond the matter immediately before the court, or beyond the parties to that immediate matter, is inherently unconstitutional because it is inherently legislative in nature.

Exercise of Executive Powers by the Judicial Branch

The courts also exercise an executive power that is tacitly accepted and that is an unremarked part of many definitions of judicial matters.

Judicial branch Branch of state and federal government whose function it is to interpret, construe, apply, and generally **administer and enforce the laws**....
—*Black's Law Dictionary*, 1979
<emphasis added>

Thus the courts are acknowledged as having an enforcement function even though enforcement is constitutionally limited to the executive branch. See Article 2, Section 1, clause 1 and Article 2, Section 3 of the U.S. constitution. Neither a court nor any part of its administration can constitutionally enforce a ruling of the court. Enforcement must be left to the executive branch of the U.S. government.

Executive and legislative powers exercised by the judicial branch of government cannot possibly be constitutional. As we were warned over 200 years ago, such an accumulation of power by a single branch of government constitutes the very definition

In Search of the Supreme Flaw of the Land: Separation of Powers

of tyranny. At the risk of appearing to be excessively repetitive, I again present the words of James Madison. They can't be presented too often or emphasized too strongly. Here they are. Read them again.

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. Were the federal Constitution, therefore, really chargeable with this accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system.

—*The Federalist Papers*, No. 47: Madison

In Search of the Supreme Flaw of the Land: Separation of Powers

The Common Fate of the Indolent

The conclusion which I am warranted in drawing from these observations is that a mere demarcation on parchment of the constitutional limits of the several departments is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.

—*The Federalist Papers*, No. 48: Madison

The U.S. constitution provided for considerable interaction between the branches of the U.S. government, yet no one branch was expected to exercise the powers of another. That was utterly denounced, even by the advocates of central government. However, the U.S. government has fallen far short of the ideal anticipated by the advocates of the U.S. constitution. The executive branch issues thousands of rules and regulations having the force of law, thereby usurping the legislative function. The executive agencies often judge violations, thereby usurping the judicial function. Thus, all three powers exist in the hands of the executive branch. The judicial branch usurps the legislative function by creating legislation under various names and by issuing court orders in various forms. It usurps the executive function by enforcing those orders. The judicial branch again usurps the legislative function by raising revenue through the imposition of fines and penalties, payable to the U.S. government. Thus the judicial branch also wields all three powers. The legislative branch seems almost benign by comparison.

According to James Madison, a staunch advocate of the U.S. constitution, the accumulation of legislative, executive, and judicial powers in the same hands may justly be pronounced the very definition of tyranny. He further conceded that if the U.S. constitution provided a mixture of powers tending toward such an accumulation, then no further arguments would be necessary to inspire a universal reprobation of that Constitution. Whatever safeguards were allegedly incorporated into the U.S. constitution have failed to prevent the accumulation of such powers. The results of this essay can inspire in the reader no other conclusion. Our rights are already gone. They've been gone for many years. The time for vigilance is long past. Lacking a timely and universal condemnation of the U.S. constitution, and a termination of the tyranny that it represents, only servitude awaits us.

It is the common fate of the indolent to see their rights become a prey to the active. The condition upon which God hath given liberty to man is eternal vigilance; which condition if he break, servitude is at once the consequence of his crime and the punishment of his guilt.

—John Philpot Curran, 1790

This page was intentionally left blank.

In Search of the Supreme Flaw of the Land: Separation of Powers

Glossary

all 1. the whole; the total; the actual aggregate or particulars or persons, or those involved in any particular consideration; everything or every one; often used with *of*; as, *all* that I aspired to be; *all* the parts assembled into an effective whole; *all* that thou seest is thine.

2. The whole, in a relative sense; one's entire property or interest; as, he was fighting for his *all*.

After all; even after everything is considered; nevertheless.

All in all; everything desired, everything together; as, thou shalt be *all in all*; also, adverbially, everything considered, altogether; as, taking things *all in all*.

At all; in any degree, to any extent, for any reason, under any circumstances; a phrase much used in negative and interrogative clauses; as, he has no time *at all* for recreation; would such a measure be considered *at all*?

For all; for all time, finally; as, let me say once *for all*.

—*Webster's Universal Dictionary of the English Language*, 1910

Apply. To make a formal request or petition, usually in writing, to a court, officer, board, or company, for the granting of some favor, or of some rule or order, which is within his or their power or discretion. For example, to apply for an injunction, for a pardon, for a policy of insurance, or for a receiver. See **Application**; **Petition**.

To use or employ for a particular purpose; to appropriate and devote to a particular use, object, demand, or subject-matter. Thus, to apply payments to the reduction of interest. See **Appropriate**.

To put, use, or refer, as suitable or relative; to co-ordinate language with a particular subject-matter; as to apply the words of a statute to a particular state of facts.

The word “apply” is used in connection with statutes in two senses. When construing a statute, in describing the class of persons, things, or functions which are within its

scope; as that the statute does not “apply” to transactions in interstate commerce. When discussing the use made of a statute, in referring to the process by which the statute is made operative; as where the jury is told to “apply” the statute of limitation if they find that the cause of action arose before a given date.

—*Black's Law Dictionary*, 1979

Case law. The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidence or formed by the adjudged cases, in distinction to statutes and other sources of law. See **Common Law**.

— *Black's Law Dictionary*, 1979

Code of Federal Regulations. The Code of Federal Regulations (CFR) is the annual cumulation of executive agency regulations published in the daily Federal Register, combined with regulations issued previously that are still in effect. Divided into 50 titles, each representing a broad subject area, individual volumes of the Code of Federal Regulations are revised at least once each calendar year and issued on a staggered quarterly basis. The CFR contains the general body of regulatory laws governing practice and procedure before federal administrative agencies.

—*Black's Law Dictionary*, 1979

CONGRESS The name of the legislative body of the United States, composed of the senate and house of representatives (q.v.). U.S. Const. art. 1, sec. 1....

—*Bouvier's Law Dictionary*, 1889

CONSTITUTION OF THE UNITED STATES OF AMERICA. The supreme law of the United States.

It was framed by a convention of delegates from all of the original thirteen states (except Rhode Island), which assembled at Philadelphia on the 14th of May, 1787. On September 17, 1787, by the unanimous consent of the states present, a form of constitution was agreed upon, and on September 28th was submitted to the congress of the confederation, with recommendations as to the method of its adoption by the

In Search of the Supreme Flaw of the Land: Separation of Powers

states. In accordance with these recommendations, it was transmitted by the congress to the several state legislatures, in order to be submitted to conventions of delegates chosen in each state by the people thereof. The several states accordingly called conventions, which ratified the constitution upon the following dates: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June, 26, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790.

Under the terms of the constitution (art. vii.), its ratification by nine states was sufficient to establish it between the states so ratifying it. Accordingly, when, on July 2, 1788, the ratification by the ninth state was read to congress, a committee was appointed to prepare an act for putting the constitution into effect; and on September 13, 1788 — in accordance with the recommendations made by the convention in reporting the constitution — congress appointed days for choosing electors, etc., and resolved that the first Wednesday in March then next (March 4, 1789) should be the time, and the then seat of congress (New York) the place, for commencing government under the new constitution. Proceedings were had in accordance with these directions, and on March 4, 1789, congress met, but, owing to the want of a quorum, the house did not organize until April 1st, nor the senate until April 6th. Washington took the oath of office on April 30th. The constitution became the law of the land on March 4, 1789. 5 Wheat.420....

—*Bowyer's Law Dictionary*, 1889

Construe. To put together; to arrange or marshal the words of an instrument. To ascertain the meaning of language by a process of arrangement and inference. See **Construction.**

—*Black's Law Dictionary*, 1979

despotism, *n.* 1. Absolute power; authority unlimited and uncontrolled by constitution or laws, and depending alone on the will of the ruler.

2. An arbitrary government; the rule of a despot; absolutism; autocracy.

3. Figuratively, absolute power or influence of any kind. Such is the *despotism* of the imagination over uncultivated minds. — Macaulay. — *Webster's Universal Dictionary of the English Language*, 1910

Enforce. To put into execution; to cause to take effect; to make effective; as, to enforce a particular law, a writ, a judgment, or the collection of a debt or fine; to compel obedience to. See *e.g.* **Attachment; Execution; Garnishment.**

—*Black's Law Dictionary*, 1979

EXECUTIVE. That power in the government which causes the laws to be executed and obeyed.

It is usually confided to the hands of the chief magistrate; the president of the United States is invested with this authority under the national government; and the governor of each state has the executive power in his hands.

The officer in whom the executive power is vested.

The constitution of the United States directs that “the executive power shall be vested in a president of the United States of America.” Art. 2, s. 1. See Story, Const. b. 3, c. 36. —*Bowyer's Law Dictionary*, 1889

Executive. As distinguished from the legislative and judicial departments (*i.e.* branches) of government, the executive department (*sic*) is that which is charged with the detail of carrying the laws into effect and securing their due observance. See also **Executive department; Executive powers.**

The word “executive” is also used as an impersonal designation of the chief executive officer of a state or nation. Term also refers to upper level management of business. See also **Executive Employees.**

—*Black's Law Dictionary*, 1979

In Search of the Supreme Flaw of the Land: Separation of Powers

Executive order. An order or regulation issued by the President or some administrative authority under his direction for the purpose of interpreting, implementing, or giving administrative effect to a provision of the Constitution or of some law or treaty. To have the effect of law, such orders must be published in the Federal Register.

—*Black's Law Dictionary*, 1979

Executive powers. Power to execute laws. The enumerated powers of the President are provided for in Article II of the U.S. Const. Executive powers of governors are provided for in state constitutions. The executive powers vested in governors by state constitutions include the power to execute the laws, that is, to carry them into effect, as distinguished from the power to make the laws and the power to judge them. *Tucker v. State*, 218 Ind. 614, 35 N.E.2d 270, 291. See also **Executive order**.

—*Black's Law Dictionary*, 1979

Federal Register. The Federal Register, published daily, is the medium for making available to the public Federal agency regulations and other legal documents of the executive branch. These documents cover a wide range of Government activities. An important function of the Federal Register is that it includes proposed changes (rules, regulations, standards, etc.) of governmental agencies. Each proposed change published carries an invitation for any citizen or group to participate in the consideration of the proposed regulation through the submission of written data, views, or arguments, and sometimes by oral presentations. Such regulations and rules as finally approved appear thereafter in the Code of Federal Regulations.

—*Black's Law Dictionary*, 1979

Interpret. To construe; to seek out the meaning of language; to translate orally from one tongue to another.

—*Black's Law Dictionary*, 1979

JUDGE-MADE LAW. A phrase used to indicate judicial decisions which construe away the meaning of statute, or find meanings in them the legislature never intended. It is sometimes used as meaning,

simply, the law established by judicial precedent. *Cooley*, Const. Lim. 70, n. See *Austin*, Prov. of Jur.

—*Bowyer's Law Dictionary*, 1889

Judge-made law. A phrase used to indicate judicial decisions which construe away the meaning of statutes, or find meanings in them the legislature never intended. It is perhaps more commonly used as meaning, simply, the law established by judicial precedent and decisions. Laws having their source in judicial decisions as opposed to laws having their source in statutes or administrative regulations.

—*Black's Law Dictionary*, 1979

JUDGMENT.... REQUISITES OF. To be valid, a judicial judgment must be given by a competent judge or court, at a time and place appointed by law, and in the form it requires. A judgment would be null if the judge had not jurisdiction of the matter, or, having such jurisdiction, he exercised it when there was no court held, or out of his district, or if he rendered a judgment before the cause was prepared for a hearing.

The judgment must confine itself to the question raised before the court, and cannot extend beyond it. For example, where the plaintiff sues for an injury committed on his lands by animals owned and kept carelessly by defendant, the judgment may be for damages, but it cannot command the defendant for the future to keep his cattle out of the plaintiff's land. That would be to usurp the power of the legislature. A judgment declares the rights which belong to the citizen, the law alone rules future actions. The law commands all men, it is the same for all, because it is general; judgments are particular decisions, which apply only to particular persons, and bind no others; they vary like the circumstances on which they are founded....

—*Bowyer's Law Dictionary*, 1889

Judicial branch. Branch of state and federal government whose function it is to interpret, construe, apply, and generally administer and enforce the laws. This branch, together with the executive and legislative branches forms our tripartite

In Search of the Supreme Flaw of the Land: Separation of Powers

form of federal and state government. See **Judicial Article; Judicial power; Judicial system, Judiciary Acts.**

—*Black's Law Dictionary*, 1979

JUDICIAL POWER. The authority vested in the judges.

The constitution of the United States declares that “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.” Art. 3, s. 1.

By the constitutions of the several states, the judicial power is vested in such courts as are enumerated in each respectively. *See the articles on the several states.* There is nothing in the constitution of the United States to forbid or prevent the legislature of a state from exercising judicial functions; 2 Pet. 413; but even in the absence of special limitations in the state constitutions, legislatures cannot exercise powers in their nature essentially judicial; 13 N. Y. 391. The different classes of power have been apportioned to different departments, and as all derive their authority from the same instrument, there is an implied exclusion of each department from exercising the functions conferred upon the others; Cooley, Const. Lim. 106. The legislative power cannot from its nature be assimilated to the judicial; the law is made by the one, and applied by the other; 1 N. H. 204; 10 Wheat. 46; 11 Penn. 494; 19 Ill. 282; 1 Ohio St. 81; 13 N. Y. 391.

A state legislature cannot annul the judgments nor determine the jurisdiction of the courts of the United States; 5 Cra. 115; 2 Dall. 410; nor authoritatively declare what the law is or has been, but what it shall be; 2 Cra. 272; 4 Pick. 23; 3 Mart. La. 248; 10 *id.* 1; 3 Mart. La. N. S. 551; 5 *id.* 519.

—*Bouvier's Law Dictionary*, 1889

JURISDICTION The authority by which judicial officers take cognizance of and decide causes. Power to hear and determine a cause. 3 Ohio. 494; 6 Pet. 591. The right of a judge to pronounce a sentence of the law, on a case or issue before him, acquired through due process of law.

It includes power to enforce the execution of what is decreed. 9 Johns. 239; 3 Metc. Mass. 460; Thach. 202....

—*Bouvier's Law Dictionary*, 1889

LEGISLATIVE POWER. The authority, under the constitution, to make laws, and to alter and repeal them.

—*Bouvier's Law Dictionary*, 1889

POLICE POWER The power we allude to is rather the police power; the power vested in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same.... The exercise of this power has been left with the individual states.... The power to establish police regulations may be conferred by the state upon municipal corporations....

—*Bouvier's Law Dictionary*, 1889

The following Charter departments are hereby established; A Police Department....

—City Charter

City of San Jose, California

Section 807(a)

Regulation. The act of regulating; a rule or order prescribed for management or government; a regulating principle; a precept. Rule of order prescribed by superior or competent authority relating to action of those under its control. Regulation is rule or order having force of law issued by executive authority of government. State ex rel. Villines v. Freeman, Okl., 370 P.2d 307, 309. See **Regulations.**

—*Black's Law Dictionary*, 1979

VEST. To give an immediate fixed right of present or future enjoyment. An estate is vested in possession when there exists a right of present enjoyment; and an estate is vested in interest when there is a present fixed right of future enjoyment. Fearn, Cont. Rem. 2. See Roper, Leg. 757; Comyns, Dig. *Vest*; Vern. 323, n.; 5 Ves. 511; 6 McLean, 422; 29 N.C. 321.

—*Bouvier's Law Dictionary*, 1889

In Search of the Supreme Flaw of the Land: Separation of Powers

vest 1. To clothe; to cover, surround, or encompass closely; to dress.

2. To clothe, as with power; to furnish; to invest; followed by *with*; as, to *vest* a man *with* authority; to *vest* a court *with* power to try cases.

3. To put in possession of a person to use and to hold; followed by *in*; as, the supreme executive power in the United States is *vested in* the president.

4. To clothe with another form; to convert into another species of property; to invest; followed by *in*; as, to *vest* money *in* goods. [Rare.]

5. In law, to give (an immediate, fixed right of present or future enjoyment); followed by *with* or *in*; as, an estate is *vested in* a buyer, who is *vested with* the estate.

—*Webster's Universal Dictionary of the English Language*, 1910

vest **1a**: to place or give into the possession or discretion of some person or authority; *esp*: to give to a person a legally fixed immediate right of present or future enjoyment of (as an estate) **b**: to grant or endow with a particular authority, right, or property <the retirement plan ~s the workers absolutely with the company's contribution after 10 years of continuous employment> **2**: to clothe with or as if with a garment; *esp*: to robe in ecclesiastical vestments ~*vi* 1: to become legally vested **2**: to put on garments; *esp*: to put on ecclesiastical vestments

—*Webster's Ninth New Collegiate Dictionary*, 1987

This page was intentionally left blank.

References

1. 1889
A LAW DICTIONARY, ADAPTED TO THE CONSTITUTION AND LAWS OF THE UNITED STATES OF AMERICA, AND OF THE Several States of the American Union: WITH REFERENCES TO THE CIVIL AND OTHER SYSTEMS OF FOREIGN LAW. BY JOHN BOUVIER. Fifteenth Edition, J. B. LIPPINCOTT COMPANY. PHILADELPHIA, 1889
2. 1910
WEBSTER'S UNIVERSAL DICTIONARY OF THE ENGLISH LANGUAGE AND COMPLETE ATLAS OF THE WORLD, COMPRISING THE AUTHORITATIVE UNABRIDGED DICTIONARY BY NOAH WEBSTER, LL. D. UNDER THE EDITORIAL SUPERVISION OF THOMAS H. RUSSELL, LL. B., LL. D., A. M., A. C. BEAN, M. E., LL. B., AND L. B. VAUGHAN, PH. B., PREPARED FOR PUBLICATION BY GEORGE W. OGILVIE, PUBLISHED BY THE SAALFIELD PUBLISHING CO., CHICAGO, AKRON, OHIO, NEW YORK, 1910-1911, Copyright 1910, by GEO. W. OGILVIE
3. 1961
The FEDERALIST Papers, ALEXANDER HAMILTON, JAMES MADISON, JOHN JAY, With an introduction, table of contents, and index of ideas by CLINTON ROSITER, A MENTOR BOOK, NEW AMERICAN LIBRARY, NEW YORK AND SCARBOROUGH, ONTARIO, COPYRIGHT © 1961 BY NEW AMERICAN LIBRARY
4. 1979
BLACK'S LAW DICTIONARY; Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern, By HENRY CAMPBELL BLACK, M. A., FIFTH EDITION BY THE PUBLISHER'S EDITORIAL STAFF, WEST PUBLISHING CO., ST. PAUL MINN., COPYRIGHT © 1979 By WEST PUBLISHING CO.
5. 1981
code of federal regulations, Energy, Title 10, Chapter 1, Parts 0 to 199, CONTAINING A CODIFICATION OF DOCUMENTS OF GENERAL APPLICABILITY AND FUTURE EFFECT, AS OF JANUARY 1, 1981, With Ancillaries, Published by the Office of the Federal Register, National Archives and Records Service, General Services Administration as a Special Edition of the Federal Register, U.S. GOVERNMENT PRINTING OFFICE, WASHINGTON: 1981
6. 1984
THE UNITED STATES GOVERNMENT MANUAL, 1984/85, Office of the Federal Register, National Archives and Records Service, General Services Administration, Revised May 1, 1984
7. 1985
CONSTITUTION of the UNITED STATES, Magna Carta, Mayflower Compact, Declaration of Rights, Declaration of Independence, Articles of Confederation, CONSTITUTION of the STATE OF CALIFORNIA, AS LAST AMENDED NOVEMBER 6, 1984, Act for the Admission of California Into the Union, CALIFORNIA LEGISLATURE, ASSEMBLY, 1985, HON. WILLIE L. BROWN, JR, SPEAKER
8. 1987
WEBSTER'S Ninth New Collegiate Dictionary, A Merriam-Webster[®], MERRIAM-WEBSTER INC., Publishers, Springfield, Massachusetts, U.S.A., Copyright © 1987 by Merriam-Webster Inc.

In Search of the Supreme Flaw of the Land: Separation of Powers

9. 1991

The Constitution, The Government, and The Doctrine of Social Contract, Sam Aurelius Milam III, Saturday, February 16, 1991