

## Topic 8

DOES THE SEPARATION OF POWERS  
PRODUCE INEFFECTIVE GOVERNMENT?**YES**

"TO FORM A GOVERNMENT"

FROM *SEPARATION OF POWERS: DOES IT STILL WORK?*

LLOYD N. CUTLER

**NO**

"IN DEFENSE OF SEPARATION OF POWERS"

FROM *SEPARATION OF POWERS: DOES IT STILL WORK?*

JAMES W. CEASER

## INTRODUCTION

The single most distinctive feature of the American national government is its separation of powers. The first three articles of the U.S. Constitution vest the national legislative power in Congress, the executive power in the president, and the judicial power in the courts. This system of government contrasts sharply with the more widely favored alternative among democracies in the world today, the parliamentary system. In our presidential (or separation of powers) system the president is elected independently of the legislature; yet in the British parliamentary system of government, for example, the prime minister is chosen by the majority party in parliament and remains in office only with the support of that majority. As a result, the British parliamentary system avoids the problem of divided government—that is, a government in which one party controls the presidency, and a different party controls one or both houses of

Congress. Divided government has been a common feature of American national politics for much of the past half century. This has prompted many to argue that our system of separated powers produces nothing but partisan bickering and policy gridlock.

It is true that the separation of powers does not facilitate easy passage of legislation. But that was the purpose of the Framers of the Constitution, who intentionally designed a system of government to prevent what they most feared, legislative tyranny. As James Madison warned in one of the essays that he wrote in defense of the Constitution, "it is against the enterprising ambition of [the legislative] department that the people ought to indulge all their jealousy and exhaust all their precautions."

The primary way in which the U.S. Constitution, protects against the danger of legislative tyranny is the separation of powers. As a

consequence of the separation of powers, laws passed by the legislative branch require the approval of the executive branch before they become effective because the president has the power to veto legislation that he disapproves of. Furthermore, the judicial branch has the power to review and strike down laws that it finds unconstitutional. The power of veto and of judicial review are part of the system of checks and balances that allows each branch to check the powers of the other branches. This results in an "invitation to struggle" among the various branches of government. The question is, did the framers of the Constitution design a system of government that is so divided that it is unable to deal adequately with the problems facing contemporary society?

The following two articles provide starkly different answers to this question. Lloyd Cutler, who was an adviser to President Jimmy Carter, argues that the separation of powers produces policy gridlock. He writes, "The separation of powers between the legislative and executive branches, whatever its merits in 1793, has become a structure that almost guarantees stalemate today." As an example of what he has in mind, Cutler points to the Carter administration's failure to secure the constitutionally required support of two-thirds of the Senate for ratification of an important arms control treaty (SALT II) that it had signed with the Soviet Union. Under the British parliamentary system, Cutler suggests, Carter would not have faced this problem. After all, the prime minister's party always has a majority in parliament (if he or she did not, then someone else would be prime minister). And more importantly, given

that the British prime minister is chosen by parliament itself, he or she is confident that any major piece of legislation submitted to parliament will be approved. The American system's separation of the executive and legislative powers, Cutler argues, makes adoption of the president's legislative program structurally difficult. This problem is compounded when the president's party does not even hold the majority of the seats in the legislature. He therefore calls on Americans to begin thinking about reforming the Constitution from a presidential system to something closer to a parliamentary system, thereby enabling our elected leaders to "form a government" [that can] propose, legislate, and administer a balanced program for governing."

James Ceaser opposes any such reform of the American system. In identifying a set of criteria for judging the relative merits of a separation of powers system and a parliamentary system, he says that the former is superior. He denies that the U.S. system is not efficient. He concedes that under certain circumstances a parliamentary system has the capacity to adopt quickly a legislative program, but points out that the greater complexity of the U.S. system ensures that the effects of any proposed policy are thoroughly debated before it is adopted.

Ceaser suggests that the U.S. system of government produces wiser public policies. And, he does not agree that the U.S. system is incapable of overcoming policy gridlock. He points to critical elections in the past (1932, 1964, and 1980) that brought into office strong presidents, backed by unified parties, and that resulted in significant changes in the direction of public policy.