

## THEME COMMITTEE 1

### A.C.D.P. PRELIMINARY SUBMISSION REGARDING SEPARATION OF POWERS

We in the ACDP believe that the government is made up of elected representatives as a result of the voting rights exercised by the population. There exists a power relation between the governed and the elected authorities. As "all" of the population has taken part in voicing their demands (through voting), it is therefore, important that the preferences of all be given constitutional protection alongside the will of a majority decision.

According to Exodus 18:19-23, powers must be separated and shared in order to be completely representative:

"Listen now to me and I will give you some advice,  
and may God be with you.

You must be the people's representative before God and bring  
their disputes to him. Teach them the decrees and laws and show  
them the

way to live and the duties they are to perform.

But select capable men from all the people - men who fear God,  
trustworthy men who hate dishonest gain

and appoint them as officials over thousands, hundreds and fifties and tens.

Have them serve as judges for the people at all times, but have them bring every  
difficult case to you,- the simple cases they can decide themselves.

That will make your load lighter, because they will share it with you.

If you do this and God so commands, you will be able to stand the  
strain and all these people will go home satisfied. "

We therefore argue for a separation of powers where government does not only consist of the executive, but of the legislative and judiciary as well.

According to the French political writer, Montesquieu, (The Spirit of Laws, 1748):

'When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a

tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would be then the legislator. were it joined to the executive power, the judge might behave with violence and oppression.

Tyranny will result when legislative, executive and judicial powers are all accumulated in the same hands, of one, a few or many.

With the separation of powers, the legislative (lawmaking) will be the body deliberating on significant policy disagreements on matters social (eg. abortion-on-demand), redistribution (eg. taxation), or national security legislation.

The executive cabinet (enforcers of the law), on the other hand, may have to haggle with legislature regarding policy formation and primarily be involved with those things that affect the country as a whole. For example, defense, foreign policy, foreign commerce, money regulations and citizenship.

The judiciary will see to the interpretation of all matters of the law and maintain independent status.

These powers should not be completely separate, but should band together through a system of checks and balances. An example of checks and balances is the executive having the right to veto laws passed by the legislature, and the legislature being able to override the veto with a larger percentage vote by their members.

The ACDP regards that the legislative will enjoy the privilege of real policy making alongside the executive. And policy formation will in turn allow for making effective and representative laws. Furthermore, the committees representing the various parties will serve to shape policy and participate in the legislative process.

For the ACDP, the separation of power will ensure legislative accountability and fluidity, as well as greater executive stability.

We further believe that separation of power will allow for more effective government, especially in a multi-party system.

'While a separation of powers will produce some conflict between the branches of government, this will assist in preserving the three branches of government and the system of checks and balances. "

STEVEN K.MAC DOWELL - LIBERATING THE NATIONS  
(1993)