

LEGISLATIVE DEPARTMENT

ARTICLE I

SECTION 1. 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.

SEPARATION OF POWERS AND CHECKS AND BALANCES

Theory and Implementation

The Constitution grants three broad powers—legislative, executive, and judicial—but it does not contain an express requirement that the boundaries between these powers be preserved, nor does it expressly mandate a requirement for a system of checks and balances. Yet the three powers are expressly granted to three separate branches, and the Constitution provides throughout the means by which each of the branches can resist the blandishments and incursions of the others. The Framers drew up our basic charter of government against a background rich in the theorizing of scholars and statesmen. The goal of these thinkers, and of the Founders, was to establish a governmental system which confers sufficient power to govern while withholding the ability to abridge liberties.¹

When the colonies separated from Great Britain following the Revolution, the framers of their constitutions were imbued with the profound tradition of separation of powers, and they freely and expressly embodied the principle in their charters.² Because of the colonial experience with royal governors and judges representing the interests of the British Crown, however, the theory of checks and balances on legislatures was less favored. As a consequence, viola-

¹ Among the best historical treatments are M. VILE, *CONSTITUTIONALISM AND THE SEPARATION OF POWERS* (1967), and W. GWYN, *THE MEANING OF THE SEPARATION OF POWERS* (1965).

² Thus the Constitution of Virginia of 1776 provided: “The legislative, executive, and judiciary department shall be separate and distinct, so that neither exercise the powers properly belonging to the other; nor shall any person exercise the powers of more than one of them, at the same time[.]” Reprinted in 10 *SOURCES AND DOCUMENTS OF UNITED STATES CONSTITUTIONS* 52 (W. S. Windler ed., 1979). *See also* 5 *id.* at 96. Art. XXX of Part First, Massachusetts Constitution of 1780 provided that: “In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws, and not of men.”