tion of the separation-of-powers doctrine by the legislatures of the states was commonplace prior to the convening of the Constitutional Convention.[3] Ultimately, it was both theory and experience which guided the Framers in the summer of 1787.[4]

The implementation of the doctrine of separation of powers in the Constitution was premised on several generally held principles: the separation of government into three branches; the concept that each branch performs unique and identifiable functions that are appropriate to each; and the limitation of the personnel of each branch to that branch, so that no one person or group should be able to serve in more than one branch simultaneously. Although the Constitution to a great extent effectuated these principles, contemporaneous critics objected to what they regarded as the curious intermixture of functions, including, for example, the veto power of the President over legislation and the role of the Senate both in the appointment of executive officers and judges and in the treaty-making process. In a powerful series of essays, James Madison addressed objections to these checks and balances.[5]

To disprove these critics, Madison relied on the writings of "the celebrated" Montesquieu, the "oracle who is always consulted" in these matters. Although "this essential precaution in favor of liberty," that is, the separation of the three great functions of government, had been achieved by the drafting of the Constitution, Madison argued that the doctrine did not demand rigid separation. Montesquieu and other theorists "did not mean that these departments ought to have no partial agency in, or control over, the acts of each other," but rather that liberty was most endangered "where the whole power of one department is exercised by the same hands which possess the whole power of another department."[6] In practice, the doctrine did not demand absolute separation, and neither closely drawn demarcations of institutional boundaries nor appeals to the electorate were appropriate to achieve its proper functioning.[7] Instead, security against concentration of powers "consists in giving to those who administer each department the necessary con-

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[3] "In republican government the legislative authority, necessarily, predominates." THE FEDERALIST, No. 51, 350 (Madison) (J. Cooke ed. 1961). *See also* id. at No. 48, 332–334. This theme continues today to influence the Court's evaluation of congressional initiatives. *E.g.*, Metropolitan Washington Airports Auth. v. Citizens for the Abatement of Aircraft Noise, 501 U.S. 252, 273–74, 277 (1991). *But compare* id. at 286 n. 3 (Justice White dissenting).

[4] The intellectual history through the state period and the Convention proceedings is detailed in G. WOOD, THE CREATION OF THE AMERICAN REPUBLIC, 1776–1787 (1969) (*see* index entries under "separation of powers").

[5] THE FEDERALIST Nos. 47–51, 323–353 (Madison) (J. Cooke ed. 1961).

[6] Id. at No. 47, 325–326 (emphasis in original).

[7] Id. at Nos. 47–49, 325–343.