

A Comparative Analysis of the Michigan Constitution

Volume I

Article IV



Citizens Research Council of Michigan

1526 David Stott Building
Detroit, 26, Michigan

204 Bauch Building
Lansing 23, Michigan

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IV SEPARATION OF POWERS

Article IV: Section 1. The powers of government are divided into three departments: The legislative, executive and judicial.

Section 2. No person belonging to one department shall exercise the powers properly belonging to another, except in the cases expressly provided in this constitution.

Constitutions of 1835 and 1850

The 1835 constitution (Article III, Section 1) provided that the powers of the government “shall be divided into three distinct departments,” legislative, executive and judicial, “and one department shall never exercise the powers of another except in such cases as are expressly provided for in this constitution.” This was similar in meaning to the 1850 provision (Article III, Sections 1 and 2) in which the present form originated.

Constitution of 1908

No change was made in this provision in carrying it over from the 1650 constitution.

Judicial Interpretation

Many judicial decisions in Michigan and other jurisdictions relate to the principle and practice of separation of powers. Historically, the doctrine of separation of powers and the related system of checks and balances is a basic feature of American government both state and federal.¹ Questions arising in relation to separation of powers have been decided over the years in a

¹ Although not American in origin, the principle became rooted in the American constitutional tradition largely as a result of Montesquieu’s great influence on the framers of the early state constitutions and the federal constitution. Montesquieu, reacting against French absolutism, observed what seemed to him an effective separation of powers in the early 18th century government of Great Britain whereby absolutism was restrained—legislative power in the Parliament, executive power then more identified with the Crown) and judicial power insofar as the courts had a degree of independence. Americans such as John Adams contributed to the modification and refinement of the principle of separation of powers through a constitutional system of intricate checks and balances among the three branches of government. By the time the state and federal constitutions were framed, the power of the Crown in Britain had continued further to decline while Parliament tended to gain power. By the time separation of powers became crystallized as a principle in the United States, the government of Britain was already well on its way toward parliamentary supremacy.

manner generally contributing to a large degree of uniformity among the various jurisdictions with some variation as a result of constitutional structure. Well formulated principles developed by precedent and court interpretation have tended to prevent undue encroachment by one branch of government upon another beyond the constitutionally authorized check-and-balance exceptions.

In Michigan, as in other jurisdictions, administrative functions of boards and commissions having quasi-legislative and quasi-judicial characteristics have been upheld, as not violative of the provision for separation of powers.² The courts should not strike down statutes on grounds of policy or propriety, but only if they are clearly contrary to the constitution.³ Attempted exercise of judicial power by the legislature and the possibility of judicial encroachment upon the executive have also been restrained.⁴

Other State Constitutions

Forty state constitutions provide specifically for the government to be divided into the three departments or branches. In 31 of these 40 constitutions, including Michigan, reference is made to checks and balances. In the other nine there is no specific reference to checks and balances, but even in these states checks and balances are provided for in the main body of the constitutions. The U.S. constitution and ten state constitutions have no specific provision relating to separation of powers. However, from the general framework and internal organization of these constitutions, the principle is clearly implied and given as much effect as if they contained specific reference to the principle. In any event, the federal government and all state governments are predicated on the theory and practice of separation of powers with the usual modifications and exceptions.⁵

Comment

In view of the long-standing and universal tradition of constitutional framework based upon separation of powers in the United States, it seems somewhat remote that Michigan or any of the states will greatly modify this prin-

² Michigan Central Railroad Co. v. Michigan Railroad Commission, 160 Mich. 355; Rock v. Carney, 216 Mich. 280; Sullivan v. Michigan State Board of Dentistry, 268 Mich. 427.

³ Thompson v. Auditor General, 261 Mich. 624; School District of Pontiac v. City of Pontiac, 262 Mich. 338.

⁴ People ex rel. Butler v. Saginaw County Supervisors, 26 Mich. 22 Bankers Trust Co. of Detroit v. Russell, 263 Mich. 677; Born v. Dillman, 264 Mich. 440.

⁵ Index Digest, p. 353-354.

ciple in the near future.⁶ While a provision of this type is unnecessary as evidenced by the lack of such in the U.S. constitution and several state constitutions, there is no compelling reason for its deletion. While those who revise the constitution might rephrase this article or even combine the two sections into one as in the 1835 constitution, there appears to be no basic difficulty with the substance of the present provision.

Separation of Powers and the Governmental Framework. As noted above, Article IV is not specific with regard to the particular features relating to separation of powers or checks and balances in the main body of the present constitution. Among the more important check-and-balance features in the governmental system are: judicial power to determine questions relating to the constitutionality of statutes and of executive action—judicial review implicit in all American constitutions; the veto power of the governor; and the legislature's basic power to influence the other branches through the law-making process.

However, in Michigan the court system is relatively inflexible as a result of rigid details in the judicial article; the governor lacks unified control of his own department, yet has a more powerful veto over legislation than the governors of more than one-half of the states and the president; and the legislature's financial powers are severely restricted. In revising the Michigan constitution as a whole, judicious attention would naturally be centered on implementing the principle of separation of powers in the main body of the constitution so that a governmental framework would be established whereby each of the three main branches or departments may operate effectively in its own sphere without overly rigorous checks within or among them that may tend to destroy due balance or to deter responsible government.

⁶ The federal constitution's guarantee of a republican form of government to the states would probably not stand in the way, however, if any state decided to experiment with a parliamentary system. Given the relative prevalence of political maturity and the continuance of a basically two-party system, such an experiment might not be unsuccessful.

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