

TITLE

THE SEPERATION OF POWERS IN MALAYSIA

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FORWARD

The main purpose of this project paper and its title is to provide an outline of the law regarding Separation of Powers particularly in Malaysia.

In the light of this and overhanging political and social weather, and looking at the corpus of the hundred or so reported cases on the constitution, it is difficult to assess their relative significance.

In line with the Separation of Powers we should not disregard the rule of law which should be employed not only to safeguard and advance the civil and political right of the individual in a free society but also established social, political, education and cultural condition under which this legitimate aspiration and dignity may be realised.

In a parliamentary democracy like ours, we encourage a more equitable and efficient system for the benefit of the people at large and for the establishment of justice.

The law is explained as it stands, without an ideological perspective either in favour of or against the judiciary and the executive & legislature.

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CHAPTER 1

INTRODUCTION

For the discussion of the Doctrine of Separation of Powers, it is traceable back to Aristotle, and then it was developed by Locke and its best known formulation in its modern form by the French political philosopher, Montesquieu.

Aristotle in his 'Politics' made the first attempt to classify the organs of government"¹ 1. That which deliberates about public affairs 2. That which is concerned with the Magistrates.....and 3. That which has Judicial power". The deliberative element, which is regarded as Supreme, ^{he} ~~be~~ defines as having authority in matters of war, peace and alliances, the passing of laws and the audit of public accounts. The second element is the system of Magistracies of distribution of offices. This covers the setting up of public offices, their authority and the manner of appointment. Aristotle is thinking here of those who have the power of deciding policy and issuing orders, especially in relation to revenue and defence. Under the Judicial part he discusses the staffing and Jurisdiction of the law courts.²

John Locke in his second Treatise of Civil Government (1690) Chapter 12 also derived a three fold classification of governmental powers. For him the fundamental and primary function of government is legislation, that is to say, the formulation of

the rules according to which men's natural rights (life, liberty and property) are to be judged. The Executive power by which he meant the enforcement of law by penalties, ~~the~~ regarded as secondary but indispensable. The third function of government says John Locke, "Contains the power of war and peace, leagues and alliances, and all the transactions with all persons and communities without the Commonwealth, and may be called federative if anyone pleases. So the thing be understood, I am indifferent as to the name."

Monstesquieu in his book L'Esprit des Lois (1748) ³ divided powers of government into:-

- i. The Legislative power.
- ii. The executive power in matter pertaining to the law of nations and,
- iii. The power of judging, and so one get the first statement of the modern classification to which we are now accustomed VIZ
 1. Legislative
 2. Executive and
 3. Judicial

For Locke, it was unwise to give to law makers the power of executing the laws, because they might exempt themselves from obedience and suit the law, making and executing it to their private interest.