

posal deals fundamentally with liberty. It would certainly take an hour's effort to survey the whole field of administrative law and to give an analysis of some of the philosophical leanings or concepts of government that are involved by the writers on this subject in this field of law and this kind of delegation. It deals with that liberty which is jeopardized, and I think all history proves that it is so jeopardized when too much power is concentrated in one branch of the government.

Now, I think there are two points that must be clearly understood by the delegates. The first point is that this provision and this recommendation pose absolutely no threat to administrative agencies or administrative law. These agencies have been delegated legislative, executive, and judicial power. They have proliferated over the past 40 to 50 years all the time while this provision has been in the Constitution. That is point number one.

Point number two is that the necessity for keeping this provision in the Constitution has not been eliminated because we simply provide in this constitution that the executive power shall be vested in the governor, the judicial power shall be vested in the courts, and the legislative power shall be vested in the General Assembly.

That power has been vested in those groups under prior constitutions, and we have had, at the same time, this provision continuing in our Constitution back to 1776.

This committee proposal is absolutely necessary if you want to prevent one thing, and one thing only, and that is a delegation of legislative power to another branch of the government, not to an administrative agency.

If you do not want to see legislative power delegated to the judges, if you do not want to see judicial power delegated to the legislature or to the executive, and so on and so forth, then you have got to support this committee proposal.

THE CHAIRMAN: You have one minute, Delegate Gleason.

DELEGATE GLEASON: In brief, we are talking here about preventing what has been attempted in this state in the past, and it has been prevented successfully because this provision has been in the Constitution. I have to say my good friend, Delegate Macdonald, that in talking about the state treasurer, and as you know this has been eliminated by this body up to this

point, he is talking about administrative agencies. Those are administrative agencies and this power just does not touch them.

If you are saying this should be eliminated because it is an anachronism of government, then I say you should go back and look at the cases because you just have not done your homework.

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: Mr. Chairman, fellow delegates, with some reluctance I rise to oppose the committee recommendation, and I do so because I believe that this statement of the separation of legislative, executive and judicial powers, that this declaration in our present Constitution would create more problems than it solves.

To give one very quick example, for example, the rule-making power which is conferred upon the Court of Appeals is a legislative power—there can be no question about it—and that is something which has existed there for the past twenty-five years and will continue into the future, shared to some extent with the legislature. Every exercise of rule-making power which is exercised by the executive agencies—and almost every one of them has to some extent or another the rule-making power—is a legislative power.

One might go on and cite example after example. One example which struck me with great force was the fact that under the local government in Montgomery County the board there which really runs the county shares the legislative and executive powers, and that type of government was recommended by the National Municipal League.

You might go on and on, and probably if I had the time I could give you 40 different exceptions to this general principle. It never was really a legal principle. The view of the Frenchman I mentioned on an earlier occasion, Montesquieu, was quite incorrect, as based on the British Parliament, because from time immemorial the House of Lords was both a legislative body and a court, as it is today.

To put this in the constitution will lead, I take it, to any number of difficult court decisions and constructions, and the need for it, if it ever existed, has largely been done away with by the fact that in our present constitution we have set up and delineated the powers of the three branches and give plenary power to the legislature; judicial power to another body; and the executive