Abstract

The essential nature of legislative power is to make the laws; that of executive power is to execute those law. The difference between the two is both substantial and significant; it is the difference between the rule of arbitrary power and the rule of law. This paper will seek to trace the genesis of an independent judicial power, in both theory and practice, through an examination of sections of The Constitutions of Clarendon, The Assize of Clarendon, Hobbes’ Leviathan, Locke’s Second Treatise, Montesquieu’s Spirit of the Laws, as well as The Federalist Papers. Moreover, it will seek to establish its executive nature and to explain why it is so often (at least presently) misunderstood to be akin to the legislative power.

Keywords