

records of him are in Annapolis but he moved continually back and forth to Baltimore and to the Eastern Shore. In 1783, he leased "Sundry Lots on Wilkes Street," Baltimore, from William Fell,⁴⁷ and, in June of that year he appeared as a witness in a Baltimore County case.⁴⁸ Mrs. Key remembered that her husband had traveled down from Baltimore to greet his old friend, then Sir Robert Eden, when he arrived in Annapolis on that fateful visit. But Robert Key eventually returned to his wife and his original residence for good. The notice in the *Gazette* for September 21, 1786 that Edward Vidler and Robert Key were "prepared to design and build houses of every kind" and had workmen, failed to bring in business. Key did not prosper in the building profession, for in 1792 he appears as a "languishing prisoner" in the Anne Arundel County jail for nonpayment of a small debt and is listed at the time of his release among the insolvent debtors.⁴⁹ Six years later, according to the county tax lists Robert Key and William Bishop were occupying a frame dwelling house, single story, 32 x 18 on a quarter of an acre rented from Richard Frazier.⁵⁰ This was obviously an office, and the occupancy was the last recorded event in Key's life.

Rebecca Campbell Key did not die until 1840, some time after the death of her husband, who seems to have left no estate. The last years of her life must have been difficult ones. With her sister, Frances Campbell, she was a pensioner of the county, receiving thirty dollars a year.⁵¹ Perhaps they lived together, and, if so, in the country below Annapolis, since Miss Campbell was buried in the churchyard of All Hallows. Mrs. Key, late in life became a convert to Roman Catholicism and it is not known where she was interred.⁵² Though Robert Key disappears as mysteriously as he came, he should take his rightful place in that band of gifted artisans who came to the colonies to seek a living and elevate the taste in building.

⁴⁷ Deeds, Baltimore, W. G. Q 293, 1783, H. of R.

⁴⁸ Chancery Court, Baltimore County, B 45-321, 1800, June 1783, H. of R.

⁴⁹ Liber Insolvent Debtors, Anne Arundel County Records, 91, Aug. 24, 1792. Estate of Richard Flemming, debts due from Robt. Keys 5:10:0. "Justices of Peace release him, a languishing prisoner in Anne Arundel County Gaol, July 2 to August 24, 1792."

⁵⁰ Tax List, Anne Arundel County, 1798, Md. Hist. Soc.

⁵¹ Liber Levy Book, pps. 306, 336, 370, 400, 431, 452, 1830-35, A. A. Co. Records.

⁵² R. C. Key, *op. cit.*

THE EXECUTIVE AND THE SEPARATION PRINCIPLE AT THE CONSTITUTIONAL CONVENTION

F. WILLIAM O'BRIEN, S. J.

IN his concurring opinion in the Steel Seizure Case in 1952, Justice Frankfurter borrowed from Brandeis the following justification for his arguments:¹

The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.

In the immediate context in which Frankfurter wrote, the implication is that the principle of friction through separation was operative in 1787 not only in a general way, but that it was particularly operative on the Founding Fathers when they set about establishing the Executive Department of the National Government.² Also implicit in Justice Frankfurter's quotation—or if not implicit, at least inviting easy inference—is that the Founding Fathers were much influenced by their fear of an *efficient* Executive, that they aimed at embarrassing his free action, and, finally, that the friction they hoped for was to be created by causing him constantly to encounter the Legislature.

¹ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 593, 613. Brandeis along with Holmes and McReynolds, dissented from Taft's majority opinion that the power of removal from office was concomitant with the power of appointment. Both Taft and Holmes leaned heavily on the "removal" debates of Congress in 1789. See *Meyers v. United States*, 272 U. S. 52, 290, 293 (1926).

² The principle of separation of powers has always been on hand as an instrument capable of exulting the horn of either branch. Historically it had been for the colonial Whigs a principle to invoke in order to enhance the local legislatures. In the *Meyers* case, Chief Justice Taft used it to heighten executive power. In the case of *Humphrey v. United States*, 295 U. S. 602 (1935), Justice Sutherland made a recovery for the Legislature by basing his "removal" decision on the same principle. And finally Mr. Truman at one time invoked the separation theory to give defensive power even to ex-presidents. See the *New York Times*, November 26, 1953 for Arthur Krock's comments on the Committee of the House on Un-American Activities, whose subpoena Mr. Truman refused to honor.