

# Human, All Too Human: Human Fallibility and the Separation of Powers

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## I Introduction

Humans are fallible – and this fallibility is the hardest thing for us to grasp. We have limited knowledge – and the limits of our knowledge routinely prevent us from realising just how much we do not know. Our reasoning processes are prone to various forms of distortion and bias – and these distortions and biases often cause us to overlook our own partiality. We are prone to favour familiar people and concepts over the unfamiliar – and our lack of understanding of other viewpoints prevents us from realising the ways in which we marginalise them. We are susceptible to temptations that lead us to go against our conscience – and these temptations also provide incentives not to scrutinise our behaviour.

Humans are fallible, but the way our society is structured inevitably means that some humans gain power to make decisions that impact on the lives of others. The state is not the only institution through which this occurs – one might equally point to the power exercised by the directors of large corporations – but it represents one area of social life where significant coercive power is concentrated in a small group of people. Constitutional principles such as the rule of law and the separation of powers exist to protect people from the flawed decisions of those in positions of power. However, the officials holding these positions routinely struggle to recognise their own fallibility. It is for this reason that the separation of powers – like other constitutional limits on government – is continually under threat.

This chapter examines the various forms of human fallibility that explain the importance of the separation of powers. It distinguishes epistemological, psychological, ethical and moral forms of fallibility and examines how each of these human failings affects government decisions. The chapter then explores how the tripartite separation of powers restrains human fallibility through both substantive and procedural mechanisms. It concludes with a reflection on the vulnerability of the separation of powers in modern administrative democracies and a plea for the importance of humility in public life. The separation of powers is integral to modern

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\* I would like to thank Rebecca Ananian-Welsh for her support and collegiality, Gabrielle Appleby for her valuable suggestions and Kate Gover and Amelia Bell for their excellent copy editing.

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