

COMPARATIVE ANALYSIS OF THE DOCTRINE OF SEPARATION OF POWERS. (IN THE WORKS OF J. LOCKE AND CH. MONTESQUIEU)

Otabek Nayimov

Associate Professor at
Alfraganus University

Abstract

The doctrine of separation of powers, a cornerstone of modern political thought, was shaped by John Locke and Charles Montesquieu. Locke, in his *Two Treatises of Government*, proposed a division of powers into legislative, executive, and federative branches, emphasizing the supremacy of the legislative power while advocating for limited government to protect individual rights and prevent absolutism. Montesquieu, in *The Spirit of Laws*, expanded on this by introducing a tripartite system of legislative, executive, and judicial powers, stressing the need of checks and balances to prevent the abuse of power. While Locke focused on the legislative branch as supreme, Montesquieu highlighted the interdependence and mutual control of the branches to maintain harmony. Both thinkers profoundly influenced the development of democratic governance, efficiency, freedoms, and the prevention of concentrated power, principles that continue to underpin modern political systems worldwide.

Key words: Separation of powers, executive power, legislative power, judicial power, individual rights and freedoms, political system.

Introduction. The separation of powers is one of the most enduring political doctrines that have had significant impact in structuring governments around the world. Aiming to curb absolutism in every form, modern political thinkers have offered an alternative to create independent administrative bodies with clearly defined duties and responsibilities thus revolutionizing political thinking in many respects. The idea was to divide government's functions into legislative, executive and judicial bodies.

Although some forms of shared governance can be seen in ancient world (especially in ancient Greece), the doctrine of separation of powers is largely the product of the Age of Enlightenment (XVII-XVIII) in Europe. It was also a time of tremendous changes in science, culture, philosophy and political thinking in Europe. The distinctive nature of the modern European thinking was the “rejection of tradition”¹. In this article we try to comparatively analyze the theories of two prominent representatives of modern political philosophy, particularly the way how they described the doctrine of separation of powers. These two outstanding scholars are John Locke and Charles Montesquieu.

Material and Methods. J. Locke (1632-1704) is one the most famous political philosopher of the modern period. Locke has skillfully outlined his political and philosophical ideas in his major work titled as “Two Treatises of Government”. In the First Treatise he strongly criticized R. Filmer’s “Patriarcha” in which Filmer glorified the divine nature of the absolute sovereign and called for unconditional submission to the high authority. In the Second Treatise, Locke represented himself as a strong advocate of individual liberal rights, such as the right to decent life, the right to private property and safety and stressed that the men are naturally free and equal. Along with Hobbes, Locke believed in social contract theory of the emergence of state and argued that the contract is voluntarily established in order “... to join and unite into a community for comfortable, safe and peaceable living, in as secure enjoyment of properties and for a greater security”².

Locke heavily criticized absolutism by proposing limited form of government in which the state administration is divided into three separate and independent bodies. In fact, Locke’s ideal legitimate government is based on the idea of separation of powers³. These three branches are the legislative, the executive and the federative power of the

¹ Forrest E. Baird, Walter Kaufmann. Modern Philosophy. Philosophic Classics Volume III, Princeton University – 1997. Pp. 7-5.

² Lock John. Two Treatises of Government. Second Treatise. Chapter VIII. Of the Beginning of Political Societies.

³ The Stanford Encyclopedia of Philosophy. John Locke’s Political Philosophy. Available at: <http://plato.stanford.edu/entries/locke-political/>

Commonwealth (in the Two Treatises of Government Locke referred to state as Commonwealth).

Legislative Power. According to Locke the most important branch of the government is the legislative power. In the Second Treatise he argues that the great end of men's entering into society being the enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society, the first and fundamental law of all commonwealths is the establishing of the legislative power⁴. For him the legislative is not only supreme power but also sacred and unalterable. Though he defended the supremacy of the law-making branch, with the executive primarily an agent of the legislature, he nevertheless refused to concede to the representatives of the people an unlimited power⁵. Locke firmly believed that regardless the form of commonwealth the ruling elite must govern the state with the declared and received laws not with the vague dictates and resolutions. As a supreme power in the state legislative issues the laws but does not possess a power of hereditary transfer of its authorities. Locke considered that the dissolution of legislative power would ultimately lead to disintegration of Commonwealth.

Executive power. As it was pointed out in the Second Treatise the main responsibility of the executive power is to enforce the issued by legislative power. Locke firmly believed in laws and famously quipped that where there is no law, there is no freedom⁶. According to Locke's political theory executive power is an important branch of government in monitoring and performing the observance of laws in the country.

Federative power. Interestingly, third important branch of government proposed by Locke is the federative power. The major functions of the federative power consist "the power of war and peace, leagues and alliances, and all the transactions with all

⁴ Lock John. Two Treatises of Government. Second Treatise. Chapter XI. Of the Extent of the Legislative Power.

⁵ Robert E. Lerner, Standish M., Edward M. Burns. Western Civilizations, Eleventh Edition, Volume I. Norton and Company – 1998. Pp. 618-619.

⁶ Ibid. Second Treatise, Chapter VI. Of Paternal Power.

persons and communities without the commonwealth”⁷. It is worth to note that Locke’s federative power also deals with foreign policy and international security thus reminding us contemporary state organs dealing with foreign and security issues.

Charles Montesquieu (1689-1755) was a prominent French lawyer and political theorist. He had lasting contribution in political science in the course of European Enlightenment by particularly developing the theories of classification of governments, separation of powers and by pioneering the doctrine of political influence of climate. In his seminal work known as “The Spirit of Laws” Montesquieu divided administrative authority into three: the executive, the legislative and the judicial powers.

It is worth to mention that Montesquieu’s “The Spirit of Laws” is a significant contribution to political philosophy. By further developing the ideas on separation of powers he drafted a formula which is largely reminiscent of modern shape of separation of powers. Man entrusted with some power is more likely to misuse it. Therefore he stressed that the main reason for the separation of powers is to avoid the abuse of any power in the state⁸. It is important to create such a system in which different branches of government shall check and balance each other with separately defined authorities and responsibilities. Montesquieu believes that the checks and balances theory is a vital element in harmonious functioning of government institutions preventing the overgrowth of certain branch which might danger political liberties of the people. The logic is to prevent concentration of power in the hands of one person or group and mutually provide checks and balances. It is necessary to entrust the functions of the government to separately created organs, so that the responsibility for performing these functions may be effectively regulated.

Legislative power. In “Spirit of Laws” Montesquieu gives the right to legislative power to the people. The representatives of people are not only engaged in law-making

⁷ Ibid. Second Treatise, Chapter XII. The Legislative, Executive and Federative Power of the Commonwealth.

⁸ Нерсесянц В.С. История политических и правовых учений. Инфра. Москва – 1996. Ст. 287-288.

processes but also deals with monitoring the realization of laws in the society. For Montesquieu the main authority of the legislative power is to create “positive laws” for all. Montesquieu’s ideal legislative power holds a right to impose taxes . Along with the chamber of representatives there is an upper house in the legislature. The upper house is hereditary structure of nobility and aristocracy, well-known for their services before the state. Unlike Locke, Montesquieu does not consider legislative power as a supreme branch in the system of government administration.

Results

Executive power. Montesquieu argued that the executive power of the state shall be entrusted to the king because performance in the leadership of a single person is faster and more effective than otherwise. In order not to allow an excessive role of the legislative power, the executive power must possess a right to veto of decisions of legislature; executive power shall also summon and dismiss legislative assembly⁹. Others can also exercise executive power, but not the representatives of legislative power because, if so, it might endanger civic liberties of the people.

Judicial power. Montesquieu notes that the judicial power is authorized for interpreting the constitution, laws and decrees as well as applying their interpretations. Judicial power belongs to judges, specifically chosen from the people in order to perform their duties in concert with other branches of government. He maintained the idea that the judicial power must be separated from the legislative and executive powers, otherwise it might lead to undesired tyranny. Montesquieu strongly defended to observe the performance of functions distinctly assigned to each branch of the government within the doctrine of separation of powers.

As a conclusion we need to emphasize that the political and philosophical theories of Locke and Montesquieu have dramatically revolutionized political thinking in many ways. Although different and sometimes contradicting, their common contribution to the doctrine of separation of powers (which is generally applicable in government formation around the world) is immense. As they wished, the doctrine of separation of

⁹ Мухаев Р.Т. История политических и правовых учений. Юнити, Москва – 2005. Ст. 243-244.

powers has been promoting efficiency in government administration by advocating individual rights and freedom.

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